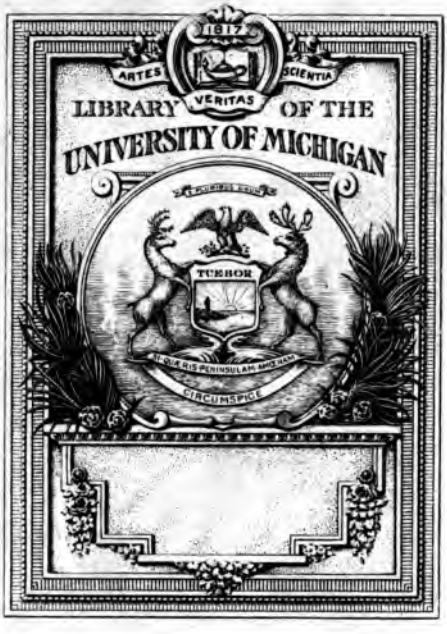
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OF

POLITICAL, CONSTITUTIONAL, STATISTICAL AND FORENSIC KNOWLEDGE.

FORMING

A WORK OF UNIVERSAL REFERENCE

ON SUBJECTS OF

CIVIL ADMINISTRATION, POLITICAL ECONOMY, FINANCE, COMMERCE, LAWS AND SOCIAL RELATIONS.

IN FOUR VOLUMES.

VOL. III.

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POLITICAL DICTIONARY.

FACTOR is a mercantile agent, who buys and sells the goods of others, and transacts their ordinary business on commission. He is intrusted with the possession, management, and disposal of the goods, and buys and sells in his own name, in which particulars consists the main difference between factors and brokers. [BROKER.]

The chief part of the foreign trade of every country is carried on through factors, who generally reside in a foreign country, or in a mercantile town at a distance from the merchants or manufacturers who employ them; and they differ from mere agents in being intrusted with a general authority to transact the affairs of their employers. The common duty of a factor is to receive consignments of goods, and make sales and remittances, either in money, bills, or purchased goods in return; and he is paid by means of a per-centage or commission upon the money passing through his hands. It is usual for a factor to make advances upon the goods consigned to him, for which, and also for his commission, he has a general lien upon all the property of his employer which may at any time be in his hands.

Previously to the stat. 6 George IV. c. 94, a factor had only authority to sell the goods of his principal, and if he pledged them, the principal might recover them from the pledgee. But by this statute the pledgee of a factor, when he lends his money without notice that the factor is not the actual owner of the goods, is enabled to retain them for his security; and even when he has such notice, the lender has a lien upon the goods to the same amount as the factor was entitled to.

The rights and liabilities of merchants and factors are governed by the laws of the place in which they are domiciled; and any contract which may be made by either of them must be governed by the law of the place where it is made; and these rules are acted upon by the courts of justice of every civilized nation. Thus, since the passing of the above-mentioned statute, a foreign merchant cannot recover his goods from the pledgee of the factor in England, though he may be totally ignorant of the change which has taken place in the law. Again, if a bill be accepted in Leghorn by an Englishman, and the drawer fails, and the acceptor has not sufficient effects of the drawer in his hands at the time of acceptance, the acceptance becomes void by the law of Leghorn, and the acceptor is discharged from all liability, though by the law of England he would be bound. (See 2 Strange's *Reports*, 733; Beawe's *Lex Merc.*; Bell's *Commentaries*; Paley, *Principal and Agent*.)

FACTORY. The name of factory was formerly given only to establishments of merchants and factors resident in foreign countries, who were governed by certain regulations adopted for their mutual support and assistance against the undue encroachments or interference of the governments of the countries in which they resided. In modern times these factories have, in a great measure, ceased to exist, because of the greater degree of security which merchants feel as regards both the justice of those governments and the protection, when needed, of their country.

The Venetians, Genoese, Portuguese, Dutch, French, and English, have all had establishments of the nature of factories. In China the Portuguese established a

factory at Macao, and the English at Canton. In most instances, factories have at first obtained the privilege of trading, and afterwards procured for the precinct assigned to them some exemption from the jurisdiction of the native courts. In this state of things the supreme government of the country whose subjects have established the factory prepare laws for its control and administration, and treat it in fact as if it were its dependency, though the sovereignty of the native government is undisputed, and to it belongs the right of legislation for the precinct of the factory, though it may not always have the power of resuming it. (*Government of Dependencies.* By George Cornewall Lewis, pp. 93 and 169.)

In its usual acceptation, the word factory is now employed to denote an establishment in which a considerable number of workmen or artisans are employed together for the production of some article of manufacture, most commonly with the assistance of machinery.

FACTORY. The word 'Factory,' according to the Factory Act (7 Vict. c. 15), means all buildings and premises wherein or within the close or curtilage of which steam, water, or any other mechanical power shall be used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, or tow, either separately or mixed together, or mixed with any other material or any fabric made thereof; and any room situated within the outward gate or boundary of any factory wherein children or young persons are employed in any process incident to the manufacture carried on in the factory, shall be taken to be a part of the factory, although it may not contain any machinery; and any part of such factory may be taken to be a factory within the meaning of the Act, 7 Vict. c. 15; but this enactment shall not extend to any part of such factory used solely for the purposes of a dwelling-house, nor to any part used solely for the manufacture of goods, made entirely of any other material than those herein enumerated, nor to any factory or part of a factory used solely for the manufacture of lace, of hats, or of paper, or solely for bleaching, dyeing, printing, or calendering.

What is called the 'factory system' owes its origin to the invention and skill of Arkwright; and it is probable that but for the invention of spinning machinery, and the consequent necessary aggregation of large numbers of workmen in cotton-mills, the name would never have been thus applied. It is in the cotton-mills that the factory system has been brought to its highest state of perfection.

The first cotton-factory was established in 1771 by Arkwright in connection with Messrs. Need and Strutt, of Derby, and was situated at Cromford, on the river Derwent; and the first of these establishments erected in Manchester was built in 1780, and had its machinery impelled by an hydraulic wheel, the water for which was furnished by a single-stroke atmospheric pumping steam-engine. The progress of cotton-factories was so rapid that in 1787 there were 145 in England and Wales, containing nearly two millions of spindles, and estimated to produce as much yarn as could have been spun by a million of persons using the old domestic wheel. The number of cotton, wool, silk, and flax-spinning factories worked by steam or water-power in the United Kingdom, with the number of persons employed therein in the year 1835, was as follows:—

	Factories.	Persons.
Cotton . .	1262	220,134
Wool . . .	1313	71,274
Silk . . .	238	30,682
Flax . . .	347	33,283
	3160	355,373

The number of persons employed in textile manufactures in Great Britain, in 1841, was 800,246, the greater part of whom are employed in factories. The numbers employed on each description of fabric was as follows:—

Cotton	377,622
Hose	50,955
Lace	35,347
Wool and Worsted .	167,296
Silk	83,773
Flax and Linen . .	85,213
	800,246

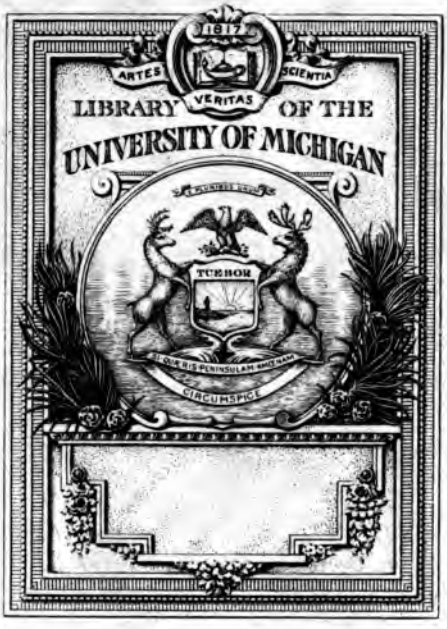
The age and sex of the above-mentioned number of persons were as under:—

	Aged 20 Years and upwards.	Under 20.	Total.
Males	344,121	109,260	453,381
Females	211,070	135,795	346,865
Total	555,191	245,055	800,246

The sex and age of persons employed in the cotton manufacture are given at COTTON MANUFACTURE AND TRADE, p. 696. "In the woollen manufacture the number of adult males employed is three times as great as that of the adult females, while the number of either sex under twenty years of age is comparatively small: the same may be said of the hose, but in the flax and linen manufactures the preponderance is not quite so great. In silk the number of both sexes employed are nearly equal, the excess among adults being with the males, and under twenty with the females. The manufacture of lace is the only one in which the number of females is very much greater than that of males." (Census Commissioners' Report.) In the Yorkshire district, which is under the superintendence of Mr. Saunders, the number of persons employed in factories in 1838 was 95,000, and in 1843 there were 106,500; but there was a positive decrease in the number of children, amounting to 2000. Mr. Howell, inspector of factories for Cheshire and the Midland Counties, states (Jan. 1844), that the few factories in which children under thirteen years of age are employed in his circuit are chiefly in isolated rural districts or in non-manufacturing towns.

The legislature has interfered to prevent children in factories being tasked beyond their strength, to the permanent injury of their constitutions. This abuse was the more to be apprehended, because a large proportion of the children engaged in cotton-spinning are not directly employed by the masters, but are under the control of the spinners, a highly-paid class of workmen, whose earnings depend greatly upon the length of time during which they can keep their young assistants at work. A parliamentary committee sat for the investigation of this subject in 1832, and subsequently a commission was issued by the crown for ascertaining, by examinations at the factories themselves, the kind and degree of abuses that prevailed, and for suggesting the proper remedies. In consequence of these inquiries, an act was passed in 1833 (3 & 4 Wm. IV., c. 103) for regulating factories. This act has been amended by 7 Vict. c. 15; but in order to show the course of recent legislation on this subject, we shall first give some of the main enactments of the first act.

The act 3 & 4 Wm. IV. provided, that after the 1st of January, 1834, no person under the age of eighteen years should work in any cotton, woollen, flax, or silk factory worked by the aid of steam or water-power, between the hours of half-past eight in the evening and half-past five in the morning; that no person under eighteen years of age should work more than twelve hours in any one day nor more than sixty-nine hours in the week. Except in silk-mills, no children under nine years of age were to be employed. Children under eleven years old were not to be worked more than nine hours in any one day, nor more than forty-eight hours in one week. This clause came into operation six months after the passing of the act. At the expiration of another twelve months its restriction was applied to children under twelve years old; and when thirty months from the passing of the act had elapsed, the restriction was applied to all children under thirteen years old. This clause came into operation on the 1st of March, 1836. In silk-mills, children under thirteen years of age were allowed to work ten hours per day. It was made illegal for any other mill-owner to have in his employ any child who had not completed eleven years of age without a certificate by a surgeon or physician "that such child is of the ordinary strength and appearance of children of or exceeding the age of nine years." In eighteen months from the passing of the act this provision was made to apply to all children under twelve years of age; and upon the 1st of March, 1836, the provision was made to include all children under the age of thirteen. Four persons were appointed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land and Wales, as they have been settled to be held since the alteration of the style; noting likewise the Commodities which each of the said Fairs is remarkable for furnishing,' by William Owen, 12mo., Lond., 1756.

No fair or market can be held except by a grant from the crown, or by prescription, which is supposed to take its rise from some ancient grant, of which no record can be found. (2 *Inst.* 220.)

(Dugdale's *Hist. Warw.*, pp. 514, 515; Warton's *Hist. Engl. Poet.*, vol. i. p. 279; Henry, *Hist. Brit.*, 8vo. edit., vol. viii. p. 325; Brand's *Popular Antiq.* 4to. edit. vol. ii., p. 215.)

The fairs of Frankfort-on-the-Mayn and Leipzig are the chief fairs in Europe: the former held at Easter and in the months of August and September; the latter at Easter, Michaelmas, and the New Year. The whole book-trade of Germany is centred in the Easter fair at Leipzig. Nishnei Novgorod in Russia, at the confluence of the Oka and Wolga, has a great annual fair in June, which is attended by about three hundred thousand strangers, many of whom come from remote parts of Asia.

FARMERS-GENERAL. Fermiers Généraux was the name given in France under the old monarchy to a company which farmed certain branches of the public revenue, that is to say, contracted with the government to pay into the treasury a fixed yearly sum, taking upon itself the collection of certain taxes as an equivalent. The system of farming the taxes was an old custom of the French monarchy. Under Francis I., the revenue arising from the sale of salt was farmed by private individuals in each town. This was and is still in France and other countries of Europe a monopoly of the government. At the present time the government of France derives about 2,200,000*l.* a year from the salt monopoly. The government reserves to itself the power of providing the people with salt, which it collects in its stores, and sells to the retailers at its own price. This monopoly was first assumed by Philippe de Valois in 1350. Other sources of revenue were likewise farmed by several individuals, most of whom were favourites of the court or of the minister of the day. Sully, the able minister of Henry IV., seeing the dilapidation of the public revenue occasioned by this system, by which, out of 150 millions paid by the people, only 30 millions reached the treasury, opened the contracts for farming the taxes to public auction, giving them to the highest bidder, according to the ancient Roman practice. By this means he greatly increased the revenue of the state. But the practice of private contracts through favour or bribing was renewed under the following reigns: Colbert, the minister of Louis XIV., called the farmers of the revenue to a severe account, and by an act of power deprived them of their enormous gains. In 1728, under the regency, the various individual leases were united into a Ferme Générale, which was let to a company, the members of which were henceforth called Fermiers Généraux. In 1759, Silhouette, minister of Louis XV., quashed the contracts of the farmers-general, and levied the taxes by his own agents. But the system of contracts revived: for the court, the ministers, and favourites were all well disposed to them, as private bargains were made with the farmers-general, by which they paid large sums as douceurs. In the time of Necker, the company consisted of forty-four members, who paid a rent of 186 millions of livres, and Necker calculated their profit at about two millions yearly—no very extraordinary sum, if correct. But independent of this profit there were the expenses of collection, and a host of subalterns to support: the company had its officers and accountants, receivers, collectors, &c., who, having the public force at their disposal, committed numerous acts of injustice towards the people, especially the poorer class, by distraining their goods, selling their chattels, &c. The "gabelle" or sale of salt, among others, was a fruitful source of oppression. Not satisfied with obliging the people to pay for the salt at the price fixed upon it in the name of the king, they actually obliged every individual above eight years of age to buy a certain quantity of salt whether wanted or not. But the rule was not alike all over France; in some provinces, which en-

joyed certain privileges, salt was 9 livres the one hundred weight, whilst in others it cost 16, and in some 62 livres. In some provinces the quantity required to be purchased per head was 25 pounds weight: in others it was 9 pounds. And yet the provinces, nay the individual families of each province, were prohibited under the severest penalties from accommodating each other's wants, and buying the superfluous salt of their neighbours, but whoever wanted more salt than his obligatory allowance was obliged to resort to the government stores. Besides, every article of provisions that was exported from one province to another was subject to duties called Traites. Every apprentice on being bound to a master was bound to pay to the king a certain sum according to the nature of the trade, and afterwards a much larger sum on his admission to practise his trade as a master. These few instances may serve to convey an idea of taxation in France previous to the Revolution. A lively but faithful picture of the whole system is given in Breton's *Histoire Financière de la France*, 2 vols. 8vo., Paris, 1829. The farmers-general, as the agents of that system, coming into immediate contact with the people, drew upon themselves a proportionate share of popular hatred. But the Revolution swept away the farmers-general, and put an end to the system of farming the revenues: it equalized the duties and taxes all over France; but the monopoly of the salt and tobacco has remained, as well as the duties on provisions, cattle, and wine brought into Paris and other large towns, called the octroi, and the right of searching by the octroi officers, if they think fit, all carriages and individuals entering the barriers or gates of the same.

The system of farming the taxes, although generally disapproved of, is still continued in some European states. Not many years ago the custom-house duties at Naples were farmed by private speculators. For the character and effects of the system see Necker, *De l'Administration des Finances.*

In England the only tax that is farmed is that on post-horses. The excise duties were farmed for some years prior to 1683.

The Roman system of levying taxes, at least after the Republic had begun to acquire territory out of Italy, was by farming them out. In the later period of the Republic the farmers were from the body of the Equestrian order. Individuals used to form companies or associations for farming the taxes of a particular district: the taxes were let by the Censors for a period of five years. They were probably let to those who bid highest. These farmers were called Publicani, and by the Greek writers Telonae (τελῶναι), which is rendered by Publicans in the English version of the New Testament, where they are appropriately classed with sinners, for they were accused of being often guilty of great extortion. These tax-collectors in the province were however only the agents. The principals generally resided at Rome, where the affairs of each association (Societas) were managed by a director called a Magister. The individual members held shares (partes) in the undertaking. There was also a chief manager in the province or district of which the company farmed the tax, who was called Promagister.

There are no means of knowing what proportions of the taxes collected reached the Roman Treasury (aerarium). Numerous complaints of the rapacity of the Publicani or their agents occur in the classical writers. These Publicani were the monied men of the late Republic and the early Empire, and their aid was often required by the state for advances of money when the treasury was empty. Part of the mal-administration probably came from the Publicani sub-letting the taxes, which seems to have been done, sometimes at least.

FATHER. [PARENT AND CHILD.]

FEALTY, says Littleton (§ 91), "is the same that *fidelitas* is in Latin. And when a freeholder doth fealty to his lord, he shall hold his right hand upon a book, and shall say thus:—'Know ye this, my lord, that I shall be faithful and true unto you, and faith to you shall bear for the lands which I claim to hold of you, and that I shall lawfully do to you the customs and services which I ought to do, at the terms assigned: so help me God

and his saints;' and he shall kiss the book. But he shall not kneel when he maketh his fealty, nor shall make such humble reverence as is aforesaid in homage."

From this it appears that fealty is the fidelity which a man who holds lands of another owes to him of whom he holds, and it contains an engagement to perform the services for which the land is granted. The law as to fealty continues unchanged, though it is not usual now to exact the oath of fealty. It is due from all tenants of land, except tenants in frankalmoigne and those who hold at will or by sufferance. The reasons for now requiring it are so few that it is nearly gone into disuse, though it serves to keep up the evidence of tenure, when there are no other services due. If it is refused, the lord may enforce it by distress.

FEDERATION. This word is derived from the Roman term Foederatus, which was applied by the Romans to States which were connected with the Roman State by a Foedus or treaty. A federal union of sovereign states may be most easily conceived in the following manner:—

We will suppose that the sovereign power in any number of independent states is vested in some individual in those several states. These sovereign persons may agree respectively with each other and with all not to exercise certain functions of sovereignty in their several states, and to transfer these functions to be jointly exercised by the contracting sovereign persons. The consequence of such a compact will be that the contracting sovereign persons in their joint capacity will become sovereign in each state and in all the states. The several sovereign persons having for the time surrendered to the joint body certain powers incident to their several sovereignties, are no longer severally sovereign in their several states. The powers surrendered to the joint body may be determined by written contract, the interpretation of which belongs to the joint body, yet in such a manner that there can be no valid interpretation unless the sovereign persons are unanimous; for if any number or majority could bind the rest, they might, by interpretation, deprive the several contracting persons of all the powers reserved to them by the contract. It follows also from the terms of the union, that any one party can withdraw from it at pleasure, and, as far as he is concerned, dissolve the union; for the essence of this union is the continuing consent of all.

This is the simplest possible form of a supreme federal government; one in which the contracting sovereign powers are individuals, and in which the sovereign persons in their aggregate capacity exercise the functions of sovereignty. Such a federation may never have existed, but any federation that does exist or can exist, however complicated it may seem, is reducible to these simple elements.

If the sovereign powers, instead of being in individuals, are in all the people of the respective states, the only difference will be that the functions of sovereignty, which in the first case we supposed to be exercised by the individual sovereigns in their joint capacity, must, in this case, be delegated to individual members of the sovereign body. The citizens of the several sovereign states must in the first instance of necessity delegate to some of their own body the proper authority for making the federal contract or constitution; and they must afterwards appoint persons out of their own body, in the mode prescribed by the federal contract, for executing the powers intrusted by the federal contract to persons so appointed. Thus the individuals who form the federal contract act therein severally as the agents of the sovereign states from which they receive their commission; and the individuals appointed to carry into effect the terms of the federal contract are the ministers and agents of that sovereign power which is composed of the several sovereign states, which again are composed of all the citizens. By whatever name, of President, Senate, House of Representatives, or other name, the agents of the sovereign power are denominated, they are only the agents of those in whom the sovereign power resides.

When the sovereign power is so distributed, the question as to the interpretation of the federal contract may in practice be more difficult, but in principle it is the

No one state can be bound by the retation of the rest, for if this were llowed there would be no assignable o the encroachments of the states ex- ıg sovereign power in their aggregate ty. It is a clear consequence of the of the compact, whether the several ign powers are nations or indivi- that each contracting power must se its judgment on the interpreta- f the instrument to which it is a and that no interpretation from any power dissents can, consistently he nature of the compact, bind that against its will.

he case of complete dissent or dis- nent by any one power, the con- s, by the very nature of its terms, nd; for the contract being among ign powers, they cannot severally h yield *obedience* to another sove- y, which results from the aggrega- f their several sovereign powers: ıcts in their joint capacity must be complete consent.

he sovereign power in such a fede- ion has delegated the power of in- ting the written instrument of union ain judiciary authorities, appointed the federal compact for the pur- f carrying its provisions into effect, veral sovereign powers must still se, either by their legislatures or judiciary authorities, their power to of the correctness of the interpret- just as much as if the several so- n persons, in the case first supposed, elves exercised the functions of so- nty in the supreme federal govern-

ıat is commonly called the general nment of the United States of North ica is an example of a federation deral government, or a supreme ıl government. The contracting s were sovereign states (the sove- y in each state being in the citizens), ı in their aggregate capacity formed eme federal government. The mi- s for carrying into effect the federal nment are the president and con- and the judiciary of the United . By the preamble to the constitu- is in fact declared that the "people United States" are the contracting parties. The several states of the union are often still called sovereign and independent states, because they retain all the sovereignty which they have not given up, expressly or by implication, to the general government; and it is considered that the chief business of the general government is to determine and control the relations of all the confederated states to foreign states, and to make provision for the general defence. In practice, however, great difficulties arise in fixing the limits between the sovereignty of the states, such as it is, and the powers of the general government.

The fifth article of the constitution provides that "The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, &c. that no state, without its consent, shall be deprived of its equal suffrage in the senate." From this article it is clear that the framers of the constitution did not fully comprehend the nature of the supreme federal government; for it is assumed by this article that the several states may be bound without their unanimous consent, which is contrary to conditions essentially implied by the nature of the union. This article involves also the inconsistency that the sovereign in any state may bind his successors: if the case of a federation of individual sovereign persons had been that to be provided for, the impossibility of the provision would have been apparent; but the impossibility equally exists when the contracting sovereign powers are respectively composed of many individuals, for the abiding consent is still the essence of the union that has been formed.

This is not the proper place to discuss the advantages and disadvantages of a supreme federal government, nor to examine into its stability. That it is neces-

sarily deficient in one element of stability, which defect arises from the necessity for all the consenting parties to continue their consent, is evident: in this respect it is like a partnership for an indefinite period, which may at any time be dissolved by any one of the partners. Such a power, which is incident to the nature of the partnership, so far from being an objection to it, is a great advantage. So long as all the parties agree, they have the benefit of the union: when they cannot agree, they take instead of it the benefit of the separation.

It is also foreign from our purpose to consider what is the tendency, in a union like that of the United States, which results from the powers placed in the hands of the President and Congress by the federal compact. If such power were placed in such hands by sovereign persons originally severally sovereign in their respective states, as in the case first supposed, the vigilance of these persons in their aggregate capacity, though somewhat less than the vigilance of a single sovereign person, would probably prevent any undue assumptions of power on the part of those to whom they had delegated certain fixed powers. But the farther the several sovereigns, who in their aggregate capacity form this federation, are removed from those to whom they delegate certain powers, and the more numerous are the individuals in whom this aggregate sovereignty resides, the greater are the facilities and means offered to, and consequently the greater is the tendency in, their ministers and agents practically to increase those powers with which they may have been intrusted. In their capacity of ministers and agents, having patronage at their command and the administration of the revenue, such agents may gradually acquire the power of influencing the election of their successors, when their own term of office is expired, and may thus imperceptibly, while in name servants, become in fact masters. That there is such a tendency to degenerate from its primitive form in all social organization, as there is in all organized bodies to be resolved into their elements, seems no sufficient reason for not forming such union and deriving from it all the advantages which under given conditions it may for an indefinite time bestow on all the members of such federation.

Those who wish to examine into the nature of the North American Union and the party questions which have arisen out of the interpretation of the federal constitution may consult the essays of Jay, Hamilton, and Madison in the *Federalist*, the *Journal of the Philadelphia Convention*, published in 1819, and Tucker's *Life of Jefferson* (London, 1836), where they will find ample reference to other authorities.

Federations of a kind existed in ancient times, such as that of the Ionian States of Asia, which assembled at the Panionium at certain times (Herodotus, i. 142); the Achæan confederation [ACHÆAN CONFEDERATION]; the Ætolian confederation [ÆTOLIAN CONFEDERATION]; and the Lycian confederation which is described by Strabo (p. 664). The Roman system of Foederate States (Civitates Foederatae) is another instance of a kind of confederation; but it was of a peculiar kind, for Rome was neither absolutely sovereign over these states nor yet associated with them in a federation, as now understood. The relationship between Rome and the federate states rather resembled the relation of sovereign and subject, than any other, though it was not precisely that.

A supreme federal government, or a composite state, is distinguished by Austin (*Province of Jurisprudence determined*) from a system of confederated states: in the latter "each of the several societies is an independent political society, and each of their several governments is properly sovereign or supreme." It is easy to conceive a number of sovereign powers, such as the German States, assembling and passing resolutions which concern all the members of the confederacy, and yet leaving these resolutions to be enforced in each state by its own sovereign power. Such a union therefore differs essentially from a supreme federal government, which enforces its commands in each and all the states. As to the existence of a written constitution, as it is called, in the one case, and a mere compact in the other,

that makes no essential difference, for the federal constitution, as we have shown, is merely articles of agreement, which only derive their efficacy from the continued assent of all the members that contribute in their aggregate capacity to form the sovereign power in such federation.

As to a system of confederated states, Austin adds: "I believe that the German Confederation, which has succeeded to the ancient empire, is merely a system of confederated states. I believe that the present diet is merely an assembly of ambassadors from several confederated but severally independent governments; that the resolutions of the diet are merely articles of agreement which each of the confederated governments spontaneously adopts; and that they owe their legal effect, in each of the compacted communities, to laws and commands which are fashioned upon them by its own immediate chief. I also believe that the Swiss Confederation was and is of the same nature. If, in the case of the German or of the Swiss Confederation, the body of confederated governments enforces its own resolutions, those confederated governments are one composite state, rather than a system of confederated states. The body of confederated governments is properly sovereign: and to that aggregate and sovereign body each of its constituent members is properly in a state of subjection."

FEE SIMPLE. [ESTATE.]

FEE TAIL. [ESTATE.]

FEES, certain sums of money claimed as their perquisite by official persons under the authority of various acts of parliament, and by prescription. The right to fees, as well as the amount payable in most cases connected with the administration of justice, has been regulated by several recent statutes.

Officers demanding improper fees are guilty of extortion.

The rewards paid to barristers and physicians, attorneys and surgeons, for their several services, are called fees, which may be recovered by the two last-named by action; but barristers and physicians cannot recover their fees by legal proceeding.

FELLOWSHIP is an establishment in some colleges which entitles the holder to a share in its revenues. Fellowships are either original, that is, part of the foundation of the original founder; or ingrafted, that is, endowed by subsequent benefactors of a college already established. Where the number of fellows is limited by the original foundation, new fellows cannot be made members of the corporate body without a new incorporation. If the number is not limited by the charter, it seems that the corporation may admit new fellows as members, who will be subject to the statutes of the original foundation in all respects. Graduates of each several college are in general only eligible to fill a vacant fellowship in the establishment, and they are elected after having undergone an examination by the master and fellows or by the master and senior fellows. But in some cases special rules which control the election prevail, as where the fellow must be of the blood of the founder, or where he must be a native of a particular county, &c., and in some few cases fellowships are open to the graduates of several colleges, or even the whole university. In Downing College, Cambridge, graduates of both universities are eligible. The rules as to the election of fellows are prescribed by the founder, modified in some cases by the by-laws of the several colleges. Some fellowships may be held by laymen, but in general they can be retained only by persons already in holy orders, or who are ordained within a specified time. Fellowships are of unequal value, varying from 30*l.* and less to 250*l.* a year and upwards, the senior fellowships being in general the most lucrative; but all confer upon their holders the right to apartments in the college, and certain privileges as to commons or meals. They are in general tenable for life, unless the holder marries, or inherits estates which afford a larger revenue, or accepts one of the livings belonging to the college which cannot be held with a fellowship. The condition of celibacy is attached to all fellowships, but it is not peculiar to them; for instance, by the statutes of the founder of Harrow school, the head master ought to vacate his mastership upon marriage, just

as in the case of a fellowship. The college livings are conferred upon the fellows, who in general have the option of taking them in order of seniority.

FELO-DE-SE (a felon of himself) is a person who, being of sound mind and of the age of discretion, deliberately causes his own death; and also in some cases, where one maliciously attempts to kill another, and in pursuance of such attempt unwillingly kills himself, he is adjudged a felo-de-se. (1 Hawkins, *P. C.* c. 27, § 4.) When the deceased is found by the coroner and jury a felo-de-se, all his chattels, real and personal, are forfeited to the crown, though they are, we believe, usually restored upon payment of moderate fees. It follows from this rule as to forfeiture, that a will made by a felo-de-se is void as to his personal estate, though not as to his real estate, nor is his wife barred of her dower. Formerly he was buried in the highway with a stake driven through his body. These laws, so highly repugnant to the feelings of humanity, being a punishment to the surviving relatives of the deceased, caused juries in general to find that the deceased was not of sound mind; and by 4 Geo. IV. c. 52. the legislature so far yielded to the popular and herein the better opinion, as to abolish the former ignominious mode of burial, and to provide that a felo-de-se shall be privately interred at night in the burial-ground in which his remains might by law have been interred if the verdict of felo-de-se had not been found against him.

FELONY, in the general acceptation of the English law, comprises every species of crime which occasioned at common law the forfeiture of lands or goods, or both, and to which a capital or other punishment might be superadded, according to the degree of guilt. Various derivations of the word have been suggested. Sir Henry Spelman supposes that it may have come from the Teutonic or German *fee* (fief or feud) and *lon* (price or value), or from the Saxon *feelen* to fall or offend. Capital punishment by no means enters into the true definition of felony; but the common notion of felony has been so generally connected with that of capital punishment, that law-writers have found it difficult to separate them: indeed, this notion acquired such force, that if a statute made any new offence felony, the legal implication was that it should be punished with death. The number of offences, however, to which this punishment is affixed by the law of England is now very small; and several statutes have been lately passed (1 Vict. c. 84, 85, 86, &c.) founded upon the principle that the punishment of death should only be inflicted for crimes accompanied with violence. Thus c. 84 substitutes the punishment of transportation for that of death in those cases where death might still be inflicted for forgery; c. 85 materially lessens the severity of the punishment of offences against the person; c. 86 enacts that burglary unaccompanied with violence shall no longer be punished capitally, and provides that, so far as the offence of burglary is concerned, the night shall be considered to commence at nine in the evening and to conclude at six in the morning; c. 87 mitigates the punishment attending the crimes of robbery and stealing from the person; c. 88 renders piracy punishable with death only when murder is attempted; c. 89 regulates the punishment for the crime of arson; c. 90 mitigates the punishment of transportation for life in certain cases; and c. 91 abolishes the punishment of death in the cases there specified. Great numbers of offences were formally liable to this severe punishment. The word felony is now used very vaguely, and it has long been employed to signify the degree of crime rather than the penal consequences. It is sufficient here to state generally, that murder, manslaughter, felo-de-se, robbery, arson, burglary, offences against the coin, &c., are considered and classed as felonies. [LAW, CRIMINAL.]

Besides the special punishment affixed to his crime by the law, a felon upon conviction forfeited the rents and profits of his lands of inheritance during his life to the king (which are now usually compounded for), and also all his goods and chattels absolutely; and as attainder of felony caused corruption of blood, his lands, except of gavelkind tenure, escheated to the lord of the fee. This last consequence, however, was taken away

by stat. 54 Geo. III. c. 145, which enacted, that, except for treason or murder, corruption of blood should not follow attainder; and as difficulties might sometimes occur in tracing descent through an ancestor who had been attainted, it was, by the 3 & 4 Will. IV. c. 108, § 10, enacted that descent may be traced through any person who shall have been attainted before such descent shall have taken place. [ATTAINDER; DESCENT; ESCHEAT; FORFEITURE.]

The distinction formerly made between felony with and without benefit of clergy is explained in BENEFIT OF CLERGY.

FEME COVERT. [WIFE.]

FEME SOLE. [WIFE.]

FEOD. [FEUDAL SYSTEM.]

FEOFFEE. FEOFFMENT.]

FEOFFMENT is that mode of conveying the property in lands or corporeal hereditaments in possession where the land passes by livery in deed, *i. e.* actual delivery of a portion of the land, as a twig or a turf; or where, the parties being on the land, the feoffor expressly gives it to the feoffee. Livery in law or within view, is when, the parties being within sight of the land, the feoffor refers to it and gives it to the feoffee. A feoffment was the earliest mode of conveying real hereditaments in possession known to the common law. A grant, which was an instrument in writing, was the mode used when lands subject to an existing estate of freehold, and when rents or other incorporeal hereditaments incapable from their nature of being the subjects of livery, were transferred. The term feoffment is evidently of feudal origin, its Latinised form being feoffamentum, from *feudare* or *infeudare*, to infeoff, to give a feud; he who confers the feud or fief is the feoffor, and he who receives it the feoffee. This mode of conveyance is common to all nations in rude ages. (Gilbert, *Ten.* 386.) It prevailed amongst the Anglo-Saxons, who gave possession by the delivery of a twig or a turf, a mode still common, particularly in the admission of tenants of copyhold lands. The form of an ancient feoffment was very concise. There is a copy of one in the Appendix to the 2nd vol. of Blackstone's *Commentaries*, No. 1.

The essential part of this mode of conveyance is the delivery of possession, or, as it is technically called, livery of seisin. In former times land was frequently conveyed without any deed or writing, by simple delivery. Subsequently it became the custom to have a written instrument called the charter or deed of feoffment, which declared the intention of the parties to the conveyance. But now, since the Statute of Frauds (29 Car. II. § 3), a written instrument is necessary. Still however the land passes by the livery, for if a deed of feoffment is made without livery, an estate at will only passes; though if livery is made, and the deed does not express that the land is conveyed to the feoffee and his heirs, an estate for the life of the feoffee only will pass. No less estate than an estate of freehold can pass by a feoffment with livery, the livery being in fact the investiture with the freehold.

Livery of seisin, of both the kinds previously mentioned, was at first performed in the presence of the freeholders of the neighbourhood, vassals of the feudal lord; because any dispute relating to the freehold was decided before them as pares curiæ, "equals of the court," of the lord of the fee. But afterwards, upon the decay of the feudal system, the livery was made in the presence of any witnesses; and where a deed was used, the livery was attested by those who were present at it.

Livery in deed may be made by the feoffor or his attorney to the feoffee or his attorney. When lands lie in several counties, as many liveries are necessary; and where lands are out on lease, there must be as many liveries as there are tenants, for no livery can be made without the consent of the tenant in possession, and the consent of one will not bind the rest. But livery in law or within view can only be given or taken by the parties themselves, though lands in several counties may pass if they all be within view. Livery of this nature requires to be perfected by subsequent entry in the lifetime of the feoffor. Formerly, if the feoffee durst not enter for fear of his life or bodily harm, his claim, made yearly in the form prescribed by law, and called continual claim, would preserve his right.

The security of property consequent upon the progress of civilization having rendered this exception unnecessary, it was abolished by the recent Statute of Limitations, 3 & 4 Will. IV. c. 27, § 11.

Since the Statute of Uses [USES] has introduced a more convenient mode of conveyance, feoffments have been rarely used. Corporations usually convey their own estates by feoffment, in consequence of the supposition that a corporate body cannot stand seised to a use, though it seems that this doctrine only applies to the case of lands being conveyed to a corporation to the use of others. (Gilbert *On Uses*, Sugd. ed. 7 note.) Where the object to be attained was the destruction of contingent remainders or the discontinuance of an estate tail, or the acquirement of a fee for the purpose of levying a fine or suffering a recovery, a feoffment was usually employed. Such indeed was the efficacy attributed to this mode of conveyance by the early law writers, that where the feoffor was in possession, however unfounded his title might be, yet his feoffment passed a fee; voidable, it is true, by the rightful owner, but which by the lapse of time might become good even as against him. Being thus supposed to operate as a disseisin to the rightful owner, it was thought till recently that a person entitled to a term of years might by making a feoffment to a stranger pass a fee to him, and then by levying a fine acquire a title by non-claim. This doctrine led to very considerable discussion, and though strictly accordant to the principle of the old law, it has been overruled. The whole state of the question may be found in Mr. Knowler's celebrated argument in Taylor dem. Atkins *v.* Horde; 1 Burr. 60, Doe dem. Maddock *v.* Lynes, 3 B. & C. 382; Jerritt *v.* Wrace, 3 Price, 575; 1 Sanders, *Uses*, 40 (4th ed.); 1 Preston, *Conv.* 32 (2nd ed.); and 4 Bythewood, *Conv.* (Jarman's edit.) 117.

The owner of lands of gavelkind tenure may convey them by feoffment at the age of fifteen; and therefore in such cases, which are rare, a feoffment is still resorted to.

FEOFFOR. [FEOFFMENT.]

FERRY, an exclusive privilege by prescription or the king's grant for the carriage of horses and men across a river or arm of the sea for reasonable toll. The owner of a ferry cannot suppress it and put up a bridge in its stead without a licence; but he is bound to keep it always in repair and readiness, with expert men, and reasonable toll, for neglect of which he is liable to be punished by indictment. If a ferry is erected so near to an ancient ferry as to draw away its custom, it is a nuisance to the owner of the old one, for which the law will give him remedy by action. The ferry is in respect of the landing-place, and not of the water, and in every ferry the land on both sides ought originally to have belonged to the same person, otherwise he could not have granted the ferry. (13 Vin. *Abr.* 208.) But as all existing ferries are of great antiquity, and generally connect roads abutting on each side of the water, the original unity of possession is mere matter of curiosity. A ferry is considered as a common highway. (3 Blackstone, *Com.*; 13 Viner, *Abr.* 208.)

FEUD. [FEUDAL SYSTEM.]

FEUDAL SYSTEM. In treating of this subject we shall endeavour to present a concise and clear view of the principles of what is called the feudal system, to indicate the great stages of its history, especially in our own country, and to state briefly the leading considerations to be taken into account in forming an estimate of its influence on the civilization of modern Europe.

The essential constituent and distinguishing characteristic of the species of estate called a feud or fief was from the first, and always continued to be, that it was not an estate of absolute and independent ownership. The property, or *dominium directum*, as it was called, remained in the grantor of the estate. The person to whom it was granted did not become its owner, but only its tenant or holder. There is no direct proof that fiefs were originally resumable at pleasure, and Mr. Hallam, in his 'State of Europe during the Middle Ages,' has expressed his doubts if this were ever the case; but the position, as he admits, is laid down in almost every writer on the

feudal system, and, if not to be made out by any decisive instances, it is at least strongly supported not only by general considerations of probability, but also by some indicative facts. This however is not material. It is not denied that the fief was at one time revocable, at least on the death of the grantee. In receiving it, therefore, he had received not an absolute gift, but only a loan, or at most an estate for his own life.

This being established as the true character of a primitive feud or fief, may perhaps throw some light upon the much disputed etymology and true meaning of the word. *Feudum* has been derived by some from a Latin, by others from a Teutonic root. The principal Latin origins proposed are *fœdus* (a treaty) and *fides* (faith). The supposition of the transformation of either of these into feudum seems unsupported by any proof. These derivations, in fact, are hardly better than another resolution of the puzzle that has been gravely offered, namely, that feudum is a word made up of the initial letters of the words "fidelis ero abique domino vero meo." The chief Teutonic etymologies proposed have been from the old German *faida*, the Danish *feide*, or the modern German *vehd*, all meaning battle-feud, or dissension; and from *fe* or *fee*, which it is said signifies wages or pay for service, combined with *od* or *odh*, to which the signification of possession or property is assigned. But, as Sir Francis Palgrave has well remarked, "upon all the Teutonic etymologies it is sufficient to observe, that the theories are contradicted by the *practice* of the Teutonic tongues—a *Feud*, or fief, is not called by such a name, or by any name approaching thereto, in any Teutonic or Gothic language whatever." (*Proofs and Illustrations to Rise and Progress of Eng. Com.*, p. ccvii.) *Lehn* or some cognate form is the only corresponding Teutonic term; *Laen* in Anglo-Saxon, *Len* in Danish, *Leen* in Swedish, &c. All these words properly signify the same thing that is expressed by our modern English form of the same element, *Loan*; a *loan* is the only name for a feud or fief in all the Teutonic tongues. What then is *feud* or *fief*? Palgrave doubts if the word *Feudum* ever existed. The true word seems to be *Feodum* (not distinguishable from *Feudum* in old writing), or *feftum*. *Fiev* or *Fief* (Latinized into *Fevodium*, which some contracted into *Fevdum*, and others, by omitting the *v*, into *Feodum*) he conceives to be *Fitef*, or *Phitef*, and that again to be a colloquial abbreviation of *Emphyteusis*, pronounced *Emphytefsis*, a well known term of the Roman imperial law for an estate granted to be held not absolutely, but with the ownership still in the grantor and the usufruct only in the hands of the grantee. It is certain that emphyteusis was used in the middle ages as synonymous with Precaria (an estate held on a precarious or uncertain tenure); that precariæ, and also præstitæ, or præstariæ (literally loans), were the same with Beneficia; and that Beneficia under the emperors were the same or near the same as fiefs. [BENEFICIUM.] (See these positions also established in Palgrave, *ut supra*, cciv.-ccvi.) It may be added that the word *Feu* is still in familiar use in Scotland for an estate held only for a term of years. The possessor of such an estate is called a *Feuar*. Many of these feus are held for 99 years, some for 999 years. A rent, or feu-duty, as it is called, is always paid, as in the case of a lease in England; but, although never, we believe, merely nominal, it is often extremely trifling in proportion to the value of the property. In Erskine's 'Principles of the Law of Scotland,' in the section "On the several kinds of Holding" (book ii. tit. 4), we find the following passage respecting feu-holding, which may be taken as curiously illustrating the derivation of fief that has just been quoted from another writer:—"It has a strong resemblance to the Roman *Emphyteusis*, in the nature of the right, the yearly duty payable by the vassal, the penalty in the case of not punctual payment, and the restraint frequently laid upon vassals not to alien without the superior's consent." As for the English term *Fee*, which is generally, if not universally assumed to be the same word with fief and feud (and of which it may be the abbreviated form, as we may infer from the words "feoffor," "infeoff," and

"feoffment"), it would be easy enough to show how, supposing that notion to be correct, it may have acquired the meaning which it has in the expressions fee-simple, fee-tail, &c.

The origin of the system of feuds has been a fertile subject of speculation and dispute. If we merely seek for the existence of a kind of landed tenure resembling that of the fief in its essential principle, it is probable that such may be discovered in various ages and parts of the world. But feuds alone are not the feudal system. They are only one of the elements out of which that system grew. In its entireness, it is certain that the feudal system never subsisted anywhere before it arose in the middle ages in those parts of Europe in which the Germanic nations settled themselves after the subversion of the Roman empire.

Supposing feud to be the same word with the Roman emphyteusis, it does not follow that the Germanic nations borrowed the notion of this species of tenure from the Romans. It is perhaps more probable that it was the common form of tenure among them before their settlement in the Roman provinces. It is to be observed that the emphyteusis, the precaria, the beneficium, only subsisted under the Roman scheme of polity in particular instances, but they present themselves as the very genius of the Germanic scheme. What was only occasional under the one became general under the other. In other words, if the Romans had feuds, it was their Germanic conquerors who first established a system of feuds. They probably established such a system upon their first settlement in the conquered provinces. The word feudum indeed is not found in any writing of earlier date than the beginning of the eleventh century, although, as Mr. Hallam has remarked, the words *feum* and *fevum*, which are evidently the same with feudum, occur in several charters of the preceding century. But, as we have shown, feudum or feud, in all probability, was not the Teutonic term. "Can it be doubted," asks Mr. Hallam, "that some word of barbarous original must have answered, in the vernacular languages, to the Latin beneficium?" There is reason to believe, as we have seen, that this vernacular word must have been *Lehn*, or some cognate form, and that feud was merely a corrupted term of the Roman law which was latterly applied to denote the same thing.

We know so little with certainty respecting the original institutions of the Germanic nations, that it is impossible to say how much they may have brought with them from their northern forests, or how much they may have borrowed from the imperial polity, of the other chief element which enters into the system of feudalism, the connection subsisting between the grantor and the grantee of the fief, the person having the property and the person having the usufruct, or, as they were respectively designated, the suzerain or lord, and the tenant or vassal. Tenant may be considered as the name given to the latter in reference to the particular nature of his right over the land; vassal, that denoting the particular nature of his personal connection with his lord. The former has been already explained; the consideration of the latter introduces a new view. By some writers the feudal vassals have been derived from the *comites*, or officers of the Roman imperial household [COUNT]: by others from the *comites*, or companions, mentioned by Tacitus (*German.* 13, &c.) as attending upon each of the German chiefs in war. The latter opinion is ingeniously maintained by Montesquieu (xxx. 3). One fact appears to be certain, and is of some importance, namely, that the original vassali or vassi were merely noblemen who attached themselves to the court and to attendance upon the prince, without necessarily holding any landed estate or beneficium by royal grant. In this sense the words occur in the early part of the ninth century. Vassal has been derived from the Celtic *gwas*, and from the German *gesell*, which are probably the same word, and of both of which the original signification seems to be a helper, or subordinate associate, in labour of any kind.

If the vassal was at first merely the associate of or attendant upon his lord, nothing could be more natural than that, when the lord came to have land to give

away, he should most frequently bestow it upon his vassals, both as a reward for their past and a bond by which he might secure their future services. If the peculiar form of tenure constituting the fief or lehn did not exist before, here was the very case which would suggest it. At all events, nothing could be more perfectly adapted to the circumstances. The vassal was entitled to a recompense; at the same time it was not the interest of the lord to sever their connexion, and to allow him to become independent; probably that was as little the desire of the vassal himself; he was conveniently and appropriately rewarded therefore by a fief, that is, by a loan of land, the profits of which were left to him as entirely as if he had obtained the ownership of the land, but his precarious and revocable tenure of which, at the same time, kept him bound to his lord in the same dependence as before.

Here then we have the union of the feud and vassalage—two things which remained intimately and inseparably combined so long as the feudal system existed. Nevertheless they would appear, as we have seen, to have been originally quite distinct, and merely to have been thrown into combination by circumstances. At first it is probable that, as there were vassals who were not feudatories, so there were feudatories who were not vassals. But very soon, when the advantage of the association of the two characters came to be perceived, it would be established as essential to the completeness of each. Every vassal would receive a fief, and every person to whom a fief was granted would become a vassal. Thus a vassal and the holder of a fief would come to signify, as they eventually did, one and the same thing.

Fiefs, as already intimated, are generally supposed to have been at first entirely precarious, that is to say, resumable at any time at the pleasure of the grantor. But if this state of things ever existed, it probably did not last long. Even from the first it is most probable that many fiefs were granted for a certain term of years or for life. And in those of all kinds a substitute for the original precariousness of the tenure was soon found, which, while it equally secured the rights and interests of the lord, was much more honourable and in every way more advantageous for the vassal. This was the method of attaching him by certain oaths and solemn forms, which, besides their force in a religious point of view, were so contrived as to appeal also to men's moral feelings, and which therefore it was accounted not only impious but infamous to violate. The relation binding the vassal to his lord was made to wear all the appearance of a mutual interchange of benefits,—of bounty and protection on the one hand, of gratitude and service due on the other; and so strongly did this view of the matter take possession of men's minds, that in the feudal ages even the ties of natural relationship were looked upon as of inferior obligation to the artificial bond of vassalage.

As soon as the position of the vassal had thus been made stable and secure, various changes would gradually introduce themselves. The vassal would begin to have his fixed rights as well as his lord, the oath which he had taken measuring and determining both these rights and his duties. The relation between the two parties would cease to be one wholly of power and dominion on the one hand, and of mere obligation and dependence on the other. If the vassal performed that which he had sworn, nothing more would be required of him. Any attempt of his lord to force him to do more would be considered as an injustice. Their connexion would now assume the appearance of a mutual compact, imposing corresponding obligations upon both, and making protection as much a duty in the lord, as gratitude and service in the vassal.

Other important changes would follow this fundamental change, or would take place while it was advancing to completion. After the fief had come to be generally held for life, the next step would be for the eldest son usually to succeed his father. His right so to succeed would next be established by usage. At a later stage fiefs became descendible in the collateral as well as in the direct line. At a still later, they became inheritable by females as well as by males. There is

much difference of opinion, however, as to the dates at which these several changes took place. Some writers conceive that fiefs first became hereditary in France under Charlemagne; others, however, with whom Mr. Hallam agrees, maintain that there were hereditary fiefs under the first race of French kings. It is supposed not to have been till the time of the first Capets in the end of the tenth century that the right of the son to succeed the father was established by law in France. Conrad II., surnamed the Salic, who became emperor in 1024, is generally believed to have first established the hereditary character of fiefs in Germany.

Throughout the whole of this progressive development of the system, however, the original nature of the fief was never forgotten. The ultimate property was still held to be in the lord; and that fact was very distinctly signified, not only by the expressive language of forms and symbols, but by certain liabilities of the tenure that gave still sharper intimation of its true character. Even after fiefs became descendible to heirs in the most comprehensive sense, and by the most fixed rule, every new occupant of the estate had still to make solemn acknowledgment of his vassalage, and thus to obtain, as it were, a renewal of the grant from the lord. He became bound to discharge all services and other dues as fully as the first grantee had been. Above all, in certain circumstances, as, for example, if the tenant committed treason or felony, or if he left no heir, the estate would still return by forfeiture or escheat to the lord, as to its original owner.

Originally fiefs were granted only by sovereign princes; but after estates of this description, by acquiring the hereditary quality, came to be considered as property to all practical intents and purposes, their holders proceeded, on the strength of this completeness of possession, themselves to assume the character and to exercise the rights of lords, by the practice of what was called subinfeudation, that is, the alienation of portions of their fiefs to other parties, who thereupon were placed in the same or a similar relation to them as that in which they stood to the prince. The vassal of the prince became the lord over other vassals; in this latter capacity he was called a mesne (that is, an intermediate) lord; he was a lord and a vassal at the same time. In the same manner the vassal of a mesne lord might become also the lord of other arrere vassals, as those vassals that held of a mesne lord were designated. This process sometimes produced curious results; for a lord might in this way actually become the vassal of his own vassal, and a vassal a lord over his own lord.

From whatever cause it may have happened (which is matter of dispute), in all the continental provinces of the Roman empire which were conquered and occupied by the Germanic nations, many lands were from the first held, not as fiefs, that is, with the ownership in one party and the usufruct in another, but as allodia, that is, in full and entire ownership. [ALLODIUM.] The holder of such an estate, having no lord, was of course free from all the exactions and burthens which were incidental to the vassalage of the holder of a fief. He was also, however, without the powerful protection which the latter enjoyed; and so important was this protection in the turbulent state of society which existed in Europe for some ages after the dissolution of the empire of Charlemagne, that in fact most of the allodialists in course of time exchanged their originally independent condition for the security and subjection of that of the feudatory. "During the tenth and eleventh centuries," says Mr. Hallam, "it appears that allodial lands in France had chiefly become feudal; that is, they had been surrendered by their proprietors, and received back again upon the feudal conditions; or more frequently perhaps the owner had been compelled to acknowledge himself the man or vassal of a suzerain, and thus to confess an original grant which had never existed. Changes of the same nature, though not perhaps so extensive or so distinctly to be traced, took place in Italy and Germany. Yet it would be inaccurate to assert that the prevalence of the feudal system has been unlimited; in a great part of France allodial tenures always subsisted, and many estates in the empire were of the same description."

After the conquest of England by the Normans, the *dominium directum*, or property of all the land in the kingdom, appears to have been considered as vested in the crown. "All the lands and tenements in England in the hands of subjects," says Coke, "are holden mediately or immediately of the king; for in the law of England we have not properly allodium." This universality of its application therefore may be regarded as the first respect in which the system of feudalism established in England differed from that established in France and other continental countries. There were also various other differences. The Conqueror, for instance, introduced here the practice unknown on the continent of compelling the arrere vassals, as well as the immediate tenants of the crown, to take the oath of fealty to himself. In other countries a vassal only swore fealty to his immediate lord; in England, if he held of a mesne lord, he took two oaths, one to his lord and another to his lord's lord. It may be observed, however, that in those times in which the feudal principle was in its greatest vigour the fealty of a vassal to his immediate lord was usually considered as the higher obligation; when that and his fealty to the crown came into collision, the former was the oath to which he adhered. Some feudists indeed held that his allegiance to the crown was always to be understood as reserved in the fealty which a vassal swore to his lord; and the Emperor Frederic Barbarossa decreed that in every oath of fealty taken to an inferior lord there should be an express reservation of the vassal's duty to the emperor. But the double oath exacted by the Norman conqueror did not go so far as this. It only gave him at the most a concurrent power with the mesne lord over the vassals of the latter, who in France were nearly removed altogether from the control of the royal authority. A more important difference between the English and French feudalism consisted in the greater extension given by the former to the rights of lords generally over their vassals by what were called the incidents of wardship and marriage. The wardship or guardianship of the tenant during minority, which implied both the custody of his person and the appropriation of the profits of the estate, appears to have been enjoyed by the lord in some parts of Germany, but no where else except in England and Normandy. "This," observes Mr. Hallam, "was one of the most vexatious parts of our feudal tenures, and was never perhaps more sorely felt than in their last stage under the Tudor and Stuart families." The right of marriage (maritagium) originally implied only the power possessed by the lord of tendering a husband to his female ward while under age: if she rejected the match, she forfeited the value of the marriage; that is, as much as any one would give to the lord for permission to marry her. But the right was afterwards extended so as to include male as well as female heirs; and it also appears that although the practice might not be sanctioned by law, some of the Anglo-Norman kings were accustomed to exact penalties from their female vassals of all ages, and even from widows, for either marrying without their consent or refusing such marriages as they proposed. The seignorial prerogative of marriage, like that of wardship, was peculiar to England and Normandy, and to some parts of Germany.

It has been very usual to represent military service as the essential peculiarity of a feudal tenure. But the constituent and distinguishing element of that form of tenure was its being a tenancy merely, and not an ownership; the enjoyment of land for certain services to be performed. In the state of society however in which the feudal system grew up, it was impossible that military service should not become the chief duty to which the vassal was bound. It was in such a state of society the most important service which he could render to his lord. It was the species of service which the persons to whom fiefs were first granted seem to have been previously accustomed to render, and the continuance of which accordingly the grant of the fief was chiefly intended to secure. Yet military service, or knight-service as it was called in England, though it was the usual, was by no means the necessary or uniform condition

on which fiefs were granted. Any other honourable condition might be imposed which distinctly recognized the *dominium directum* of the lord. [KNIGHT-SERVICE.]

Another common characteristic of fiefs, which in like manner arose incidentally out of the circumstances of the times in which they originated, was that they usually consisted of land. Land was in those times nearly the only species of wealth that existed; certainly the only form of wealth that had any considerable security or permanency. Yet there are not wanting instances of other things, such as pensions and offices, being granted as fiefs. It was a great question nevertheless among the feudists whether a fief could consist of money, or of any thing else than land; and perhaps the most eminent authorities have maintained that it could not. The preference thus shown for land by the spirit of the feudal customs has perhaps left deeper traces both upon the law, the political constitution, and the social habits and feelings of our own and other feudal countries than any other part of the system. We have thence derived not only the marked distinction (nearly altogether unknown to the Roman law) by which our law still discriminates certain amounts of interest in lands and tenements under the name of *real* property from property of every other kind, but also the ascendency retained by the former in nearly every respect in which such ascendency can be upheld either by institutions or by opinion.

The grant of land as a fief, especially when it was a grant from the suzerain, or supreme lord, whether called king or duke, or any other name, was, sometimes at least, accompanied with an express grant of jurisdiction. Thus every great tenant exercised a jurisdiction civil and criminal over his immediate tenants: he held courts and administered the laws within his lordship like a sovereign prince. It appears that the same jurisdiction was often granted by the crown to the abbeys with their lands. The formation of MANORS in this country appears to have been consequent upon the establishment of feudalism. The existence of manor-courts, and so many small jurisdictions within the kingdom, is one of the most permanent features of that polity which the Normans stamped upon this country.

In the infancy of the feudal system it is probable that the vassal was considered bound to attend his lord in war for any length of time during which his services might be required. Afterwards, when the situation of the vassal became more independent, the amount of this kind of service was fixed either by law or by usage. In England the whole country was divided into about 60,000 knights' fees; and the tenant of each of these appears to have been obliged to keep the field at his own expense for forty days on every occasion on which his lord chose to call upon him. For smaller quantities of land proportionately shorter terms of service were due: at least such is the common statement; although it seems improbable that the individuals composing a feudal army could thus have the privilege of returning home some at one time, some at another. Women were obliged to send their substitutes; and so were the clergy, certain persons holding public offices, and men past the age of sixty, all of whom were exempted from personal service. The rule or custom however, both as to the duration of the service, and its extent in other respects, varied greatly in different ages and countries.

The other duties of the vassal were rather expressive of the relation of honourable subordination in which he stood to his lord, than services of any real or calculable value. They are thus summed up by Mr. Hallam:—"It was a breach of faith to divulge the lord's counsel, to conceal from him the machinations of others, to injure his person or fortune, or to violate the sanctity of his roof and the honour of his family. In battle he was bound to lend his horse to his lord when dismounted; to adhere to his side while fighting, and to go into captivity as a hostage for him when taken. His attendance was due to the lord's courts, sometimes to witness and sometimes to bear a part in the administration of justice."

There were however various other substantial advantages derived by the

lord. We have already mentioned the rights of wardship and of marriage, which were nearly peculiar to the dominions of the English crown. Besides these, there were the payment, called a relief, made by every new entrant upon the possession of the fief, the escheat of the land to the lord when the tenant left no heir, and its forfeiture to him when the tenant was found guilty either of a breach of his oath of fealty, or of felony. There was besides a fine payable to the lord upon the alienation by the tenant of any part of the estate, if that was at all permitted. Finally, there were the various Aids, as they were called, payable by the tenant. [AIDS.]

The principal ceremonies used in conferring a fief were homage, fealty, and investiture. The two first of these cannot be more distinctly or more shortly described than in the words of Littleton: "Homage," says the Treatise of Tenures, "is the most honourable service, and most humble service of reverence, that a frank tenant may do to his lord: for when the tenant shall make homage to his lord, he shall be ungirt and his head uncovered, and his lord shall sit and the tenant shall kneel before him on both his knees, and hold his hands jointly together between the hands of his lord, and shall say thus: I become your man, from this day forward, of life and limb, and of earthly worship, and unto you shall be true and faithful, and bear you faith for the tenements that I claim to hold of you, saving the faith that I owe to our sovereign lord the king; and then the lord, so sitting, shall kiss him." Religious persons and women instead of "I become your man," said "I do homage unto you." Here it is to be observed there was no oath taken; the doing of fealty consisted wholly in taking an oath, without any obeisance. "When a freeholder (frank tenant)," says Littleton, "doth fealty to his lord he shall hold his right hand upon a book, and shall say thus: Know ye this, my lord, that I shall be faithful and true unto you, and faith to you shall bear for the lands which I claim to hold of you, and that I shall lawfully do to you the customs and services which I ought to do at the terms assigned, so help me God and his saints; and he shall kiss the book. But he shall not kneel when he maketh the fealty, nor shall make such (that is, any such, *tiel*), humble reverence as is aforesaid in homage." [FEALTY.] The investiture or the conveyance of feudal land is represented by the modern FEOFFMENT.

The feudal system may be regarded as having nearly reached its maturity and full development when the Norman conquest of England took place. It appears accordingly to have been established here immediately or very soon after that event in as pure, strict, and comprehensive a form as it ever attained in any other country. The whole land of the kingdom, as we have already mentioned, was without any exception either in the hands of the crown, or held in fief by the vassals of the crown, or of them by subinfeudation. Those lands which the king kept were called his demesne (the Terræ Regis of the Domesday Survey), and thus the crown had a number of immediate tenants, like any other lord, in the various lands reserved in nearly every part of the kingdom. No where else, also, before the restrictions established by the charters, were the rights of the lord over the vassal stretched in practice nearer to their extreme theoretical limits. On the other hand, the vassal had arrived at what we may call his ultimate position in the natural progress of the system; the hereditary quality of feuds was fully established; his ancient absolute dependence and subjection had passed away; under whatever disadvantages his inferiority of station might place him, he met his lord on the common ground of their mutual rights and obligations; there might be considerable contention about what these rights and obligations on either side were, but it was admitted that on both sides they had the same character of real, legally binding obligations, and legally maintainable rights.

This settlement of the system however was anything rather than an assurance of its stability and permanency. It was now held together by a principle altogether of a different kind from that which had originally created and cemented it. That which had been in the

beginning the very life of the relation between the lord and the vassal had now in great part perished. The feeling of gratitude could no more survive than the feeling of dependence on the part of the latter after feuds became hereditary. A species of superstition, indeed, and a sense of honour, which in some degree supplied the place of what was lost, were preserved by oaths and ceremonies, and the influence of habit and old opinion; but these were at the best only extraneous props; the self-sustaining strength of the edifice was gone. Thus it was the tendency of feudalism to decay and fall to pieces under the necessary development of its own principle.

Other causes called into action by the progress of events conspired to bring about the same result. The very military spirit which was fostered by the feudal institutions, and the wars, defensive and aggressive, which they were intended to supply the means of carrying on, led in course of time to the release of the vassal from the chief and most distinguishing of his original obligations, and thereby, it may be said, to the rupture of the strongest bond that had attached him to his lord. The feudal military army was at length found so inconvenient a force that soon after the accession of Henry II. the personal service of vassals was dispensed with, and a pecuniary payment, under the name of Escuage, accepted in its stead. From this time the vassal was no longer really the defender of his lord; he was no longer what he professed to be in his homage and his oath of fealty; and one effect of the change must have been still farther to wear down what remained of the old impressiveness of these solemnities, and to reduce them nearer to mere dead forms. The acquisition by the crown of an army of subservient mercenaries, in exchange for its former inefficient and withal turbulent and unmanageable army of vassals, was in fact the discovery of a substitute for the main purpose of the feudal polity. Whatever nourished a new power in the commonwealth, also took sustenance and strength from this ancient power. Such must in especial degree have been the effect of the growth of towns, and of the new species of wealth, and, it may be added, the new manners and modes of thinking, created by trade and commerce.

The progress of sub-infeudation has sometimes been represented as having upon the whole tended to weaken and loosen the fabric of feudalism. It "demolished," observes Blackstone (ii. 4), "the ancient simplicity of feuds; and an inroad being once made upon their constitution, it subjected them in a course of time to great varieties and innovations. Feuds began to be bought and sold, and deviations were made from the old fundamental rules of tenure and succession, which were held no longer sacred when the feuds themselves no longer continued to be purely military." But the practice of sub-infeudation would rather seem to have been calculated to carry out the feudal principle, and to place the whole system on a broader and firmer basis. It would be more correct to ascribe the effects here spoken of to the prohibition against sub-infeudation. The effect of this practice, it is true, was to deprive the lord of his forfeitures and escheats and the other advantages of his seigniory, and various attempts therefore were at length made to check or altogether prevent it, in which the crown and the tenants in chief, whose interests were most affected, may be supposed to have joined. One of the clauses of the great charter of Henry III. (the thirty-second) appears to be intended to restrict sub-infeudation (although the meaning is not quite clear), and it is expressly forbidden by the statute of Quia Emptores (the 18 Ed. I. c. 1). Sub-infeudation was originally the only way in which the holder of a fief could alienate any part of his estate without the consent of his lord; and it therefore now became necessary to provide some other mode of effecting that object, for it seems to have been felt that after alienation had been allowed so long to go on under the guise of sub-infeudation, to restrain it altogether would be no longer possible. The consequence was, that, as a compensation for the prohibition of sub-infeudation, the old prohibition against alienation was removed; lands were allowed to be alienated, but the purchaser or grantee did not hold them

of the vendor or grantor, but held them exactly as the grantor did; and such is still the legal effect in England when a man parts with his entire interest in his lands. This change was effected by the statute of Quia Emptores with regard to all persons except the immediate tenants of the crown, who were permitted to alienate on paying a fine to the king by the statute 1 Edw. III. c. 12. Thus at the same time that a practice strictly accordant to the spirit of feudalism, and eminently favourable to its conservation and extension, was stopped, another practice, altogether adverse to its fundamental principles, was introduced and established, that of allowing *voluntary* alienation by persons during their lifetime.

It was a consequence of feudal principles, that a man's lands could not be subjected to the claims of his creditors. This restraint upon what may be called *involuntary* alienation has been in a great degree removed by the successive enactments which have had for their object to make a man's lands liable for his debts; although, after a lapse of near six hundred years since the statute of Acton Burnell, the lands of a debtor are not yet completely subjected to the just demands of his creditors. This statute of Acton Burnell, passed 11 Ed. I. (1283), made the devisable burgages, or burgh tenements, of a debtor saleable in discharge of his debts. By the Statute of Merchant, passed 13 Ed. I. (1285), called Statute 3, a debtor's lands might be delivered to his merchant creditor till his debt was wholly paid out of the profits. By the 18th chapter of the Statute of Westminster the Second, passed the same year, a moiety of a debtor's land (not copyhold) was subjected to execution for debts or damages recovered by judgment. But the lands are not sold: the moiety of them is delivered by the sheriff to him who has recovered by judgment, to occupy them till his debt or damages are satisfied. Finally, by the several modern statutes of bankruptcy, the whole of a bankrupt debtor's lands have become absolutely saleable for the payment of his debts. Further, by a recent act (3 & 4 Wm. IV. c. 104), all a deceased person's estate in land, of whatever kind, not charged by his will with the payment of his debts, whether he was a trader within the bankrupt laws or not, constitutes assets, to be administered in equity, for the payment of his debts, both those on specially and those on simple contract.

An attempt had early been made to restore in part the old restraints upon *voluntary* alienation by the statute 13 Ed. I. c. 1, entitled 'De Donis Conditionalibus,' which had for its object to enable any owner of an estate, by his own disposition, to secure its descent in perpetuity in a particular line. So far as the statute went, it was an effort to strengthen the declining power of feudalism. The effect was to create what were called estates tail, and to free the tenant in tail from many liabilities of his ancestor to which he would be subject if he were seised of the same lands in fee-simple. [ESTATE.] The power which was thus conferred upon landholders of preventing the alienation of their lands remained in full force for nearly two centuries, till at last, in the reign of Edward IV., by the decision of the courts (A.D. 1472) the practice of barring estates tail by a common recovery was completely established.

The practice of conveying estates by fine, which was of great antiquity in England, and the origin of which is by some referred to the time of Stephen or Henry II., was regulated by various statutes (among others, particularly by the 4 Henry VII.), and contributed materially to facilitate the transfer of lands in general, but more particularly (as regulated by the statute just mentioned) to bar estates tail. By a statute passed in the 32 Henry VIII. c. 28, tenants in tail were enabled to make leases for three lives or twenty-one years, which should bind their issue. The 26 Hen. VIII. c. 13, also had declared all estates of inheritance, in use or possession, to be forfeited to the king upon any conviction of high treason, and thus destroyed one of the strongest inducements to the tying up of estates in tail, which hitherto had only been forfeitable for treason during the life of the tenant in tail.

Another mode by which the feudal restraints upon *voluntary* alienation came

at length to be extensively evaded was the practice introduced, probably about the end of the reign of Edward III., of granting lands to persons to *uses*, as it was termed; that is, the new owner of the land received it not for his own use, but on the understanding and confidence that he would hold the land for such persons and for such purposes as the grantor then named or might at any time afterwards name. Thus an estate in land became divided into two parts, one of which was the legal ownership, and the other the right to the profits or the *use;* and this use could be transferred by a man's last *will* at a time when the land itself, being still bound in the fetters of feudal restraint, could not be transferred by will, except where it was devisable, as in Kent and some other parts of England, by special custom. The person who thus obtained the use or profits of the estate—the *Cestui que use*, as he is called in law—was finally converted into the actual owner of the land to the same amount of interest as he had in the use (A.D. 1535) by the statute of Uses (the 27 Hen. VIII. c. 10), and thus the power of devising land which had been enjoyed by the mode of uses was taken away. But this important element in the feudal system, the restraint on the disposition of lands by will, could no longer be maintained consistently with the habits and opinions then established, and accordingly, by stat. 32 Hen. VIII. (which was afterwards explained by the stat. 34 Hen. VIII.), all persons were allowed to dispose of their freehold lands held in fee-simple by a will in writing, subject to certain restrictions as to lands held by knight-service either of the king or any other, which restrictions were removed by the stat. 12 Chas. II. c. 24, which abolished military tenures.

Notwithstanding these successive assaults upon certain parts of the ancient feudalism, the main body of the edifice still remained almost entire. It is said that the subject of the abolition of military tenures was brought before the parliament in the 18th of James I., on the king's recommendation, but at that time nothing was done in the matter. When the civil war broke out in 1641, the profits of marriage, wardship, and of most of the other old feudal prerogatives of the crown, were for some time still collected by the parliament, as they had formerly been by the king. The fabric of the feudal system in England however was eventually shattered by the storm of the Great Rebellion. The Court of Wards was in effect discontinued from 1645. The restoration of the king could not restore what had thus been in practice swept away. By the above-mentioned statute, 12 Car. II. c. 24, it was accordingly enacted that from the year 1645 the Court of Wards and Liveries, and all wardships, liveries, primer-seisins, values, and forfeitures of marriage, &c., by reason of any tenure of the king's majesty, or of any other by knights' tenures, should be taken away and discharged, together with all fines for alienations, tenure by homage, escuage, aids pur filz marrier and pur fair fitz chevalier, &c.; and all tenures of any honours, manors, lands, tenements or hereditaments, or any estate of inheritance at the common law, held either of the king or of any other person or persons, bodies politic or corporate, were turned into free and common soccage, to all intents and purposes. [SOCCAGE.] By the same statute every father was empowered by deed or will, executed in the presence of two witnesses, to appoint persons to have the guardianship of his infant and unmarried children, and to have the custody and management of their property. It was not till after the lapse of nearly another century that the tenures and other institutions of feudalism were put an end to in Scotland by the statutes, passed after the Rebellion, of the 20 Geo. II. c. 43, entitled 'An Act for abolishing Heritable Jurisdictions;' and the 20 Geo. II. c. 50, entitled 'An Act for taking away the Tenure of Ward-holding in Scotland, for giving to heirs and successors a summary process against superiors, and for ascertaining the services of all tenants, &c.' Nor have estates tail in Scotland yet been relieved from the strictest fetters of a destination in perpetuity, either by the invention of common recoveries, or by levying a fine, or by any legislative enactment.

We have enumerated the principal statutes which may be considered as having broken in upon the integrity of the feudal system, considered in reference to the power which the *tenant* of land can now exercise over it, and the right which others can enforce against him in respect of his property in it. But the system of tenures still exists. The statute of Charles II. only abolished military tenures and such parts of the feudal system as had become generally intolerable; but all lands in the kingdom are still held either by soccage tenure, into which military tenures were changed, or else by the respective tenures of frankalmoigne, grand serjeanty, and copyhold, which were not affected by the statute.

Some of the consequences of tenures, as they at present subsist, cannot be more simply exemplified than by the rules as to the FORFEITURE and ESCHEAT of lands, both of which however have undergone modifications since the statute of Charles II.

To attain a comprehensive and exact view of the present tenures of landed property in England and their incidents and consequences, it would be necessary for the reader to enter upon a course of study more laborious and extensive than is consistent with pursuits not strictly legal. Still a general notion may be acquired of their leading characteristics by referring to several of the articles already quoted, and to such heads as ATTAINDER, BARON, COPYHOLD, COURTS, DISTRESS, ESTATE, LEASE, MANOR, TENURES, and such other articles as may be referred to in those last mentioned.

The notions of loyalty, of honour, of nobility, and of the importance, socially and politically, of landed over other property, are the most striking of the feelings which may be considered to have taken their birth from the feudal system. These notions are opposed to the tendency of the commercial and manufacturing spirit, which has been the great moving power of the world since the decline of strict feudalism; but that power has not yet been able to destroy, or perhaps even very materially to weaken, the opinions above mentioned in the minds of the mass.

We are not however to pass judgment upon feudalism, as the originating and shaping principle of a particular form into which human society has run, simply according to our estimate of the value of these its relics at the present day. The true question is, if this particular organization had not been given to European society after the dissolution of the ancient civilization, what other order of things would in all likelihood have arisen, a better or a worse than that which did result?

As for the state of society during the actual prevalence of the feudal system, it was without doubt in many respects exceedingly defective and barbarous. But the system, with all its imperfections, still combined the two essential qualities of being both a system of stability and a system of progression. It did not fall to pieces, neither did it stand still. Notwithstanding all its rudeness, it was, what every right system of polity is, at once conservative and productive. And perhaps it is to be most fairly appreciated by being considered, not in what it actually was, but in what it preserved from destruction, and in what it has produced.

The earliest published compilation of feudal law was a collection of rules and opinions supposed to have been made by two lawyers of Lombardy, Obertus of Otto and Gerardus Niger, by order of the Emperor Frederic Barbarossa. It appeared at Milan about the year 1170, and immediately became the great text-book of this branch of the law in all the schools and universities, and even a sort of authority in the courts. It is divided in some editions into three, in others into five books, and is commonly entitled the 'Libri Feudorum;' the old writers however are wont to quote it simply as the Textus, or Text. But the great sources of the feudal law are the ancient codes of the several Germanic nations; the capitularies or collections of edicts of Charlemagne and his successors; and the various Coutumiers, or collections of the old customs of the different provinces of France. The laws of the Visigoths, of the Burgundians, the Salic law, the laws of the Alemanni, of the Baiuvarii, of the Ripuarii, of the Saxons, of the Anglii, of the Werini, of the Frisians, of the Lom-

bards, &c., have been published by Lindenbrogius in his *Codex Legum Antiquarum*, fol. Francof., 1613. The best editions of the capitularies are that by Baluze, in 2 vols. fol., Paris, 1677, and that by Chiniac, of which, however, we believe only the two first volumes have appeared, Paris, fol., 1780. Richebourg's *Nouveau Coutumier Général*, 4 vols. fol., Paris, 1724, is a complete collection of the Coutumiers, all of which however have also been published separately. All these old laws and codes, as well as the Milan text-book, have been made the subject of voluminous commentaries.

FIDEI COMMISSUM. [TRUST.]

FIEF. [FEUDAL SYSTEM.]

FIELD-MARSHAL, a military dignity conferred on such commanders of armies as are distinguished by their high personal rank or superior talents.

It has been supposed that the term marshal is derived from *Martis Seneschallus;* but it is more probable that it came from the Saxon words *mar*, or *marach*, a horse, and *scalck*, a servant; and it appears to have designated the person who had the care of a certain number of horses in the royal stables. In the Teutonic laws such a person is called *mariscalcus*, and the fine for his murder is particularly specified.

The earl-marshal of England had originally the chief command of the army; and history records the names of two noblemen, De Montmorency and Fitzosborne, on whom the title was conferred by William the Conqueror.

The office was by Henry VIII. made hereditary in the family of the Duke of Norfolk; but it is probable that it had before that time ceased to be connected with the military service; for from the 'Anecdotes of the Howard Family,' we learn that while another person held the post of earl-marshal, Sir Robert Willoughby, Lord Brooke, was appointed by Henry VII. to be marshal of the army.

The title of Maréchal de France appears to have become a military dignity in that country in the time of Philip Augustus; and, according to Père Daniel, the first person who held it was Henry Clement, the commander of the French army at the conquest of Anjou in 1204. Originally there was only one Maréchal de France, but, in 1270, when the king, Saint Louis, went on his expedition to Africa, a second was appointed. Francis I. added a third, and the number was increased by Napoleon to twelve.

The maréchaux de camp, in the old French service, were charged with the duty of arranging the encampment and providing subsistence for the troops; and in action they had the command of the wings or of the reserve of an army under the general-in-chief. From the title borne by this class of general officers is derived that of feld-marschall in the German armies; and we have adopted the title from the German.

The number of British field-marshals is at present six: the Duke of Wellington, the King of Hanover, the Duke of Cambridge, the King of the Belgians, Prince Albert, and the King of Holland. Field-marshals have no pay as such, but they retain their pay as full generals, and the command of two regiments may be given to them instead of one.

FILIATION. [BASTARDY.]

FIREBOTE. [COMMON, RIGHTS OF, p. 578.]

FIRM. [PARTNERSHIP.]

FIRST-FRUITS (Primitiæ), the profits of every spiritual living for one year, according to the valuation thereof in the king's books. They were claimed by the pope throughout Christendom; in England his claim was first asserted in the reign of King John, and then only so far as related to clerks whom he appointed to benefices. Afterwards Pope Clement V. and John XXII., about the beginning of the fourteenth century, demanded and took them from all clerks, by whomsoever presented. By the statutes 25 Henry VIII. c. 20, and 26 Henry VIII. c. 3, first-fruits and tenths [TENTHS] were taken from the pope and given to the king. In the thirty-second year of the same king's reign a court was erected for the management of them, but it was soon after abolished. Ultimately Queen Anne gave up this branch of the royal revenue to be applied towards the augmentation of small livings. [BENEFICE.]

First-fruits arising in Ireland were by the 2 Geo. I. c. 15, directed to be ap-

plied for the same purpose; but by the 3 & 4 William IV. c. 37, the payment of first-fruits in Ireland is abolished. (1 Blackstone, *Com.*; 2 Burn, *Eccles. Law.*)

FISCUS. [ALLODIUM.]

FISHERIES are localities frequented at certain seasons by great numbers of fish, where they are taken upon a large scale. The right of frequenting these fishing-grounds has frequently been matter of dispute between governments, and sometimes the subject of treaties, while exclusion from them or invasion of presumed exclusive rights to their enjoyment has been the cause of warlike preparations.

Of the British fisheries, some are carried on in rivers or their æstuaries, and others in the bays or along the coasts. Our principal cod-fishery is on the banks of Newfoundland; and for whales our ships frequent the shores of Greenland, Davis's Straits, and the South Seas. Of late, whale fisheries have also been carried on near the shores of New Holland, New Zealand, and the Cape of Good Hope.

During the sixteenth, seventeenth, and a part of the eighteenth centuries very exaggerated notions prevailed as to the wealth which this country might derive from prosecuting the herring fisheries on a large scale. Even the value of the Dutch herring fishery, which was no doubt very great, has generally been magnified. (See Laing's 'Notes of a Traveller.') Before this country had begun to supply the markets of the world with our manufactures, the fisheries were an object of greater importance, comparatively, than they now are; and from the reign of Elizabeth, and during the two following centuries, associations were formed, and generally under the auspices of persons of rank and authority, for the prosecution of fisheries on the coasts. It will be sufficient if we notice one or two of these associations.

Charles II., on his restoration, appointed, in 1667, a "Council of Royal Fishery," to which the Duke of York, the Earl of Clarendon, and other persons were named, with powers to make laws for the management of the trade, and to punish any persons who should offend against them. For further encouragement, a lottery was granted for three years; a collection was made in churches; and an exemption granted for seven years from customs duty on fish exported to the Baltic, Denmark, Norway, France, and some other countries. Besides this, all victuallers and coffeehouse-keepers were compelled each to take a certain number of barrels of herrings yearly at 30*s.* per barrel, "until a foreign market should be established to the satisfaction of the council." Besides these encouragements, a duty of 2*s.* 6*d.* per barrel was imposed upon foreign herrings imported; and a promise was made of "all such other advantages as experience should discover to be necessary." Great as were these encouragements, no progress was made in the fishery for sixteen years, at which time a charter was granted to a new fishing company. This company, which was renewed in 1690, also failed, and was dissolved by act of parliament early in the reign of William III. Further efforts, made in 1720 and 1750, were alike unsuccessful. Various reasons have been assigned for these repeated failures. Andrew Yarington, in the second part of 'England's Improvement by Sea and Land,' sums up all other reasons in this one fact—"We fish intolerably dear, and the Dutch exceedingly cheap."

In 1749 a committee of the House of Commons was appointed to inquire concerning the herring and white fisheries, and as the result of its labours a corporation was formed, with a capital of 500,000*l.*, under the name of "The Society of the Free British Fishery." A bounty of 36*s.* per ton on all decked vessels of from 20 to 80 tons employed in fishing was granted for fourteen years. This bounty was increased in 1657 to 56*s.* per ton, but without producing an adequate return to the adventurers, and in 1759, by the 33rd Geo. II., a bounty of 80*s.* per ton was granted, besides 2*s.* 8*d.* per barrel upon all fish exported, and interest at the rate of 3 per cent. was secured to the subscribers, payable out of the Customs revenue. The whole number of vessels entered on the Custom House books for the fisheries in conse-

quence of this act was only eight. In this year the whole buss fishery of Scotland, according to the statement of Adam Smith ('Wealth of Nations,' b. iv. c. v.), brought in only four barrels of "Sea Sticks" (herrings cured at sea), each of which, in bounties alone, cost the government 113*l.* 15*s.*, and each barrel of merchantable herrings cost 159*l.* 7*s.* 6*d.* The explanation of this fact is, that the bounty being given to the vessels and not to the fish, "ships were equipped to catch the bounty and not the herrings." By the 25th Geo. III. (1785-6) the tonnage bounty was reduced to 20*s.*, and a bounty of 4*s.* per barrel was given on the fish, but the whole payment was limited to 30*s.* per ton, except when more than three barrels per ton were taken, in which case 1*s.* per barrel was given on the excess. On an average of ten years 54,394 barrels were taken annually, at a cost to the government of about 7*s.* 6*d.* per barrel.

In 1786 "The British Society for extending the Fisheries and improving the Sea Coasts of the Kingdom" was incorporated, and a joint-stock was subscribed "for purchasing land, and building thereon free towns, villages, and fishing-stations in the Highlands and Islands of Scotland." This joint-stock was raised by the subscriptions of a few individuals, who did not look for any profitable return. The members of the society were chiefly proprietors of estates, and their object was the improvement of their property.

Another act was passed in 1808 for the regulation of the fisheries. The bounty was again raised to 60*s.* per ton on decked vessels of not less than 60 tons, burthen, with an additional bounty of 20*s.* per ton for the first thirty vessels entered in the first year. Premiums amounting to 3000*l.* were also granted for boats of not less than 15 tons' burthen. This act prescribed regulations for fishing, curing, inspecting, and branding herrings, and a board of seven commissioners was appointed for administering the law. This act, which was at first passed for a limited time, was made perpetual in 1815 (55 Geo. III., c. 94). The tonnage-bounty had in the mean time been extended to fishing-vessels of not less than 45 tons' burthen. During the year 1814 only five vessels had been fitted out for the fishery from Yarmouth, and not one for the deep-sea fishery from any other port of Great Britain. For the inspection and branding of herrings the whole coast of Great Britain was divided into districts. In each of these officers were appointed to oversee the operations of the fishermen, and to prevent frauds in regard to the bounty. The principal regulations affecting the curing of herrings were borrowed from the practice of the Dutch fishermen. In 1817 a further boon was granted to the fishermen by allowing them the use of salt duty free; a peculiar advantage, which ceased in 1823 by the repeal of the duty on that article.

The impolicy of granting these bounties was at length seen and acknowledged. In 1821 the tonnage bounty of 60*s.* above mentioned was repealed; the bounty of 4*s.* per barrel, which was paid up to the 5th of April, 1826, was thereafter reduced 1*s.* per barrel each succeeding year; so that in April, 1830, the bounty ceased altogether. This alteration of the system was not productive of any serious evil to the herring fishery. The average annual number of barrels of herrings cured and exported respectively in the five years that preceded the alteration was 349,488 and 224,370. In the five years from 1826 to 1830, while the bounty was proceeding to its annihilation, the average numbers were 336,896 cured, and 208,944 exported; and in the five years ending the 5th of April, 1837, the average numbers were 396,910 barrels cured, and 222,848 exported. In 1842 the quantities (barrels) of white herrings cured, &c., in Great Britain (so far as the same had been brought under the cognizance of the commissioners of the herring fishery under 1 Wm. IV. c. 54), were as follows:—

	Cured.	Exported.
Gutted. .	489,583	283,583
Ungutted.	178,219	1206
	667,802	248,789

The principal countries to which herrings were exported in 1842 were—

	Barrels.
Prussia	73,915
Other parts of Germany	28,335
Italy	25,105
France	19,659
British West Indies .	3,526
Mauritius	2,258

In 1843 the number of vessels which cleared outwards for the British Herring Fishery was 333, of 7316 tons, and the crews amounted to 1150 men. The netting which they possessed was 481,906 square yards, and they took out 121,724 bushels of salt and 60,904 barrels. The total number of barrels of cured herrings landed during the season was 57,539, of which 55,949 were gutted and packed within twenty-four hours after being caught. The gross total of white herrings cured by fish-curers on shore in the ports of Scotland was 565,880 barrels, out of which number 383,231 contained herrings gutted and packed within twenty-four hours after they were caught. There were besides, it is computed, herrings sold in a fresh and cured state to the value of 114,538*l.* The number of barrels of white herrings which were entitled to be branded with the official brand was 162,713, and 114,614 barrels were assorted and cured according to the Dutch mode, and were branded accordingly.

The number of boats and of fishermen, and other persons employed in taking, gutting, curing, and packing cod and herrings in 1832 and 1842 were as follows:—

	1832.	1842.
Boats	11,059	12,479
Fishermen	49,164	52,998
Coopers, curers, packers, &c. . .	31,402	36,733

The removal of the bounty has been attended with an improvement in the number of the fishermen generally, and in Scotland the fishermen have been able, from the fair profits of their business, to replace the small boats they formerly used by new boats of larger dimensions, and to provide themselves with fishing materials of superior value. In fact, the tonnage bounty system was an encouragement to idleness and perjury.

In 1833 a select committee of the House of Commons was appointed to inquire into the distress which was at that time said to affect the several fisheries in the British Channel. One cause of this distress, it was alleged, was the interference of the fishermen of France but by a convention with France, concluded in 1839, limits are now established for the fishermen of the two countries. Another cause of the unprosperous state of the fishermen was stated in the report of the committee to be "the great and increasing scarcity of all fish which breed in the Channel, compared with what was the ordinary supply fifteen to twenty years ago."

We do not at present hear of the distress amongst the fishermen on our coasts. The facilities of communication with populous inland districts have greatly extended the market for fish, and in parts of the country in which fish had scarcely been at all an article of food. In London, where the facilities for obtaining a supply of fish are nearly perfect, there is one dealer in fish to four butchers, and fish is hawked about the streets to a great extent; but in Warwickshire the proportion of dealers in fish to butchers is as 1 to 27, and in Staffordshire 1 to 44. In the borough of Wolverhampton there was only 1 fish-dealer in 1831, but there were 46 butchers. It is evident that when the large masses of population in the midland and northern manufacturing districts acquire a habit of consuming fish as an agreeable variety to their ordinary supply of food, a great impetus will be given to the fisheries on all our coasts. The rapid means of transport afforded by railways enable the inhabitants of Birmingham and London to consume cod and other fish caught in the Atlantic by the fishermen of Galway and Donegal. This improvement in the means of communicating with the best markets is a great boon. The fishermen who supply the London market instead of returning to Gravesend or other ports of the Thames and Medway, for instance, put their cargoes already packed in hampers on board the steam-boats which pass along the whole eastern coast as far north as Aberdeen; or they sometimes make for Hull or some other port in the neighbourhood of the

fishing-ground, and there land their cargoes, which are conveyed to London in the course of a few hours or to other great inland markets in a still shorter time. Fast sailing cutters are sometimes employed to take provisions to the boats on the fishing-ground, which bring back the fish taken by each. In consequence of these arrangements the fishermen are sometimes kept at sea for several months together.

It is amusing at this time to read the various projects or "ways to consume more fish," which were entertained at the commencement of the last century. The difficulty on account of the cost of conveyance, and the limited distance to which fresh fish could be sent from the coast, induced some persons to propose that fish sent to inland towns should be "marinated," or pickled according to a peculiar method. In the sixteenth century, and before those improvements in agriculture were made by which fresh meat may be obtained all the year round, there were great fish fairs in different parts of the country, at which persons bought a stock of salted fish sufficient to last during the winter and the subsequent season of Lent. The herring fair at Yarmouth was regulated by a statute in the fourteenth century. In 1533 the fairs of Stourbridge, St. Ives, and Ely were "the most notable fairs within this realm for provision of fish" (24 Hen. VIII. c. 4). In 1537 the town of Lynn, in Norfolk, obtained letters patent for establishing a fish fair; but in 1541 the right of holding the fair was abolished by statute (33 Hen. VIII. c. 34), because the inhabitants attempted to engross the business of other fairs. The supply of the fairs and markets with cheap fish was considered an important matter in those days. In 1541 an act was passed which prohibited the English fishermen from buying fish of foreigners at sea, because if they did not do so "the same Picards and Flemings would bring the same fish over themselves and sell it to the king's subjects much better cheap, and for less money" (33 Hen. VIII. c. 2).

One branch of fishing wholly different in its object from all other branches has been described by the committee of 1833 under the title of the *Stow-Boat Fishery*. This fishery prevails principally upon the Kentish, Norfolk, and Essex coasts; and the object is the catching of sprats as manure for the land, for which there is a constant demand. This branch of fishing is represented by the committee to have much increased, and to give employment on the Kentish coast alone to from 400 to 500 boats, which remain upon the fishing grounds frequently for a week together and until each has obtained a full cargo.

Vessels and boats employed in fishing are licensed by the Commissioners of Customs in pursuance of the acts for the prevention of smuggling; and they are required to be painted or tarred entirely black, except the name and place to which such vessel or boat belongs. A parliamentary return for 1844 gives the number of vessels above and under fifty tons registered at each port in the United Kingdom: the greater proportion of those under fifty tons are principally employed in fishing. At Faversham there were 218 vessels under fifty tons, and their average tonnage was twenty-one tons; at Yarmouth, 321; Southampton, 131; Maldon, 105; Rochester, 256; Colchester, 203; Dover, 91; Rye, 55; Ramsgate, 80; Dartmouth, 256.

The licences thus granted specify the limits beyond which fishing vessels must not be employed: this distance is usually four leagues from the English coast, and it is affirmed that our fishermen are injured by this restriction, because some valuable fishing grounds lie beyond the prescribed limits and are thus abandoned to foreigners.

The *pilchard fishery*, which is carried on upon parts of the Devon and Cornish coasts, is of some importance. The number of boats engaged in it is about 1000, which give employment to about 3500 men at sea and about 5000 men and women on shore. As soon as caught the pilchards are salted or pickled and exported to foreign markets, chiefly to the Mediterranean: the average export amounts to 30,000 hogsheads per year. The quantity was much greater formerly, when a bounty of 8*s.* 6*d.* per hogshead was paid upon all exported; heavy duties are generally imposed in the countries to which the exports are made.

Our chief salmon fisheries are carried on in the rivers and æstuaries of Scotland, but the annual value of this fishery is not exactly known. In 1835 the produce of the salmon fisheries in Sutherlandshire was 258,291 lbs.; in the river Foyle, 321,366 lbs.; in the river Beauly the number of fish taken was 15,891, and the number taken in the south-east and north-east was 54,659, and the average weight of each was estimated at 10 lbs. The produce of the fishings in the rivers Tay, Dee, Don, Spey, Findhorn, Beauly, Borriedale, Langwell and Thurso, and of the coasts adjacent, are conveyed in steam-boats and small sailing-vessels to Aberdeen, where they are packed with ice in boxes and sent to the London market. The shipments thus made from Aberdeen, in 1835, was 11,549 boxes (each containing from ten to twelve fish and weighing 120 lbs.) and 5671 kits.

The rental of the salmon fisheries on the river Tweed averaged about 12,000*l.* a-year for the seven years preceding 1824. The late Duke of Gordon received a rental of about 8000*l.* a-year for a fishery on the Spey: the expenses of the fishery are supposed to have amounted to about one-half this sum.

London is the great market to which Scotch salmon are sent. The quantity which arrives during one season is about 2500 tons, and the average price is from 10*d.* to 1*s.* per lb. The arrivals average about 30 boxes per day in February and March, 50 in April, from 80 to 100 in May, from 200 to 300 at the beginning of June, and 500 towards the close of the month, when the number gradually increases until it amounts, at the end of July and beginning of August, to 1000 boxes and upwards per day, and the price is occasionally as low as 5*d.* and 6*d.* per lb.; and is in fact lowest at the time when the fish is in the primest condition. The plan of packing salmon in ice was adopted about 1785, and the idea was taken from the Chinese; but it was not until the application of steam to navigation that the trade reached anything like its present magnitude. Even when ice was used, contrary winds would protract the voyage and the fish would be spoiled. The London trade, instead of being at its height in July and August, was over by May, or whenever the weather became warm. The great towns of Yorkshire, Lancashire, and the midland manufacturing counties, are also frequently supplied with immense quantities of Scotch and Irish salmon, but they are not constantly well supplied.

The produce of salmon fisheries in Ireland is also considerable.

Salmon fishing commences on the 1st of February, and terminates on the 14th of September. The intervening period is called 'close-time,' and the acts for regulating salmon fisheries impose penalties on those who take fish during this season.

Mackerel visit every part of our coasts in the spring and early part of the summer, and are taken in great abundance. For the encouragement of the mackerel and other similar fisheries, the carriages in which the fresh fish are conveyed to London are exempted from the post-horse duty. As mackerel will not keep, it may be hawked about on Sunday for sale, a privilege which no other fish enjoys.

The *cod* fishery at Newfoundland was carried on as early as 1500 by the Portuguese, Biscayans, and French, but it was not until 1585 that the English ventured to interfere with them. In that year Sir Francis Drake being sent to the island with a squadron, seized the foreign ships which he found engaged in the fishery, and sent them to England, where they were declared lawful prizes. In 1614 and 1615 the English had 200 and 250 vessels engaged in the Newfoundland cod fishery. Towards the end of the seventeenth century it was carried on on a still larger scale by the French; and it is stated by the author of 'Considerations on the Trade to Newfoundland,' inserted in the second volume of Churchill's 'Collection of Voyages,' that the French 'have quite beaten the English out of this trade, as may be instanced in many of the outports of our nation, and particularly Barnstaple and Biddeford, which formerly employed in this trade above fifty ships, and now do not fit out above six or eight small ships.'

By the treaty of Utrecht, which acknowledged the sovereignty of the whole

island of Newfoundland to be in the Crown of England, the privilege of fishing on part of the coast was reserved to France, notwithstanding which the English fishery there increased to a great extent. In 1763 there were taken and cured by the English at the fisheries of Newfoundland 386,274 quintals or hundred-weights of cod-fish, and 694 tierces of salmon, besides 1598 tons of fish-oil. In that year there were 106 vessels employed in carrying on the fishery, 123 ships for conveying the fish when cured to England, and 142 ships for its conveyance to British colonies. The principal fisheries of Newfoundland are prosecuted on the banks which nearly surround that island: the object of these fisheries is solely cod-fish. Salmon, mackerel, herrings, and some other kinds of fish and seal are taken off the coasts of the island.

The cod-fish cured and exported to England and to foreign countries in 1785 amounted to 591,276 quintals; in 1832 to 619,177 quintals: in 1833 to 883,536 quintals; in 1837 to 835,559 quintals, which were valued at 520,240*l.* The products of the Newfoundland fisheries exported in 1832 was 583,687*l.*; in 1833, 699,174*l.*; and in 1837, 843,903*l.*, as under:

		Value. £
Cod, dry—quintals	835,559	520,240
„ wet—barrels .	648	1086
Herrings—boxes and barrels . .	2078	1416
Salmon—boxes and barrels . .	3834	8552
Other sorts of fish	..	627
Seal-skins—No.	353,648	34,044
Oil, train and spermaceti—gallons	2,084,375	277,938

The value of the exports of fish in 1832 amounted to 458,662*l.*; in 1837 to 531,921*l.*; and in 1842 to 528,540*l.*, and with oils and seal-skins to 839,260*l.*

These fisheries may be said to be the sole pursuit of the settlers in Newfoundland, and of the traders who frequent the island. Nearly every family has a small piece of land under garden cultivation, but agriculture is not pursued as a substantive occupation.

In 1818 a convention was concluded between the United States government and that of Great Britain for regulating the fisheries on the coasts of the British American provinces. By the first and second articles the inhabitants of the United States were to have for ever, in common with the subjects of Great Britain, liberty to take, dry, and cure fish in and on certain portions of the coast therein defined, and by the third article the Americans gave up all claim to take fish within three miles of any coasts, bays, creeks, or harbours, within the British dominions in America not included in the limits defined. Some dispute has arisen between the two governments respecting infractions of the Convention. The Americans conceived that they were allowed to enter bays and fish if they kept three miles from the shore; but by the British interpretation the prescribed limit of three miles is to be measured from the headlands of bays, and that consequently the Americans were excluded from the interior of bays and indentations of the coast. In 1843 the United States government acquiesced in this view of the case.

In the other British North American colonies fisheries are established, and the produce enters more or less into their foreign commerce. The fisheries on Lake Huron have lately been prosecuted, and promise to become of considerable importance. The kinds of fish exported are chiefly cod, herrings, salmon, and mackerel. The actual value of these exports from each colony, in the years 1832 and 1837, was as follows:—

	1832.	1837.
Eastern (Lower) Canada .	£6,475	£6,149
New Brunswick	31,885	30,550
Nova Scotia .	155,189	181,961
Prince Edward's Island .	65	5,341
Cape Breton .	10,383	11,738
Total .	£203,997	£235,739

The bay Des Chaleurs in the St. Lawrence is considered the best fishing station on the continent of America. It is said that there are from 3000 to 5000 United States schooners fishing every summer in this bay. They cure cod to

tent of 1,800,000 quintals, while tish colonists up to a recent period t in this fishery cure more than) quintals. In 1844 an act was in the Imperial Parliament for rating a company under the title of spé Fishing and Mining Company. *whale* fishery was carried on suc- ly during the twelfth, thirteenth, urteenth centuries by the Biscayans. hales taken by them in the bay of appear to have been of a smaller than those since found in more rn latitudes. The Biscayan fishery g ceased, owing probably to the estruction of the animals. It is to yagers who, near the end of the th century, attempted to find a pas- rough the northern ocean to India, e owe the discovery which led to ablishment of the fishery in the seas eenland and Spitzbergen. The h and the Dutch were the first to t in this adventure; but the French, Hamburgers, and others were not o follow their example. At first ales were so numerous that the was comparatively easy, and was essfully pursued, that in addition ships actually engaged in the fish- any other vessels were sent in to the shores of Spitzbergen, and ole returned home with full car- f oil and whalebone. It was then actice to boil the blubber on the nd bring home the oil in casks. progress of the fishery the whales e less numerous, and, when found, lifficult to take. It therefore be- necessary to pursue them farther to en sea, and at length it was found economical to bring the blubber in order to its being boiled, and the ents before used for that purpose bandoned. The whale fishery was ong period sustained by bounties. 32 the bounty was 20*s.* a-ton on ship of more than 200 tons; in 1740 increased to 40*s.*; in 1777 it was d to 30*s.*, and in five years the num- vessels employed fell from 105 to d in 1781 the former rate of bounty was restored. In 1787 the bounty ain reduced to 30*s.*; in 1792, to 25*s.*; 5, to 20*s.*; and in 1824 it ceased.

That part of the Arctic Sea which lies between Spitzbergen and Greenland, and which was formerly frequented by the whale-ships, is now almost wholly abandoned because of the scarcity of the fish, and the northern whale-fishery is now chiefly pursued in Davis's Straits. The change here noticed has occurred within the last thirty years. In 1816 and 1820, above 100 ships were engaged in the Greenland fishery, and in 1833 and 1834 only 3 and 7; but the number employed in the Straits fishery had increased from 45 in 1816 to 91 in 1830. In the twenty years from 1815 to 1834 inclusive, the average annual results of the Greenland and Davis's Straits fishery were as follows:—

Number of ships returned to Great Britain	115¾
Tonnage of ditto	37,013¾
Number of ships lost	5
Tuns of train oil	11,313
Tons of whalebone	591¾
Number of whales taken	1,024
Tuns of oil yielded by each whale	11½
Tuns of oil procured by each ship	101¼

The average prices during these twenty years were—of oil, 28*l.* 15*s.* per tun, and of whalebone, 163*l.* per ton; it follows therefore that the annual average produce of the fishery amounted to 421,704*l.*

In 1842 the number of British ships engaged in the northern whale-fishery was only 18 (14 to Greenland, and 4 to Davis's Straits); the number of whales taken was 54, which yielded 668 tuns of oil. In 1840 the quantity of oil was only 412 tuns. Hull, which was once the great port for the northern whale-fishery, has in two years recently only sent out two vessels, instead of 60 or 70, and none have gone out from London. One-half of the ships are now sent out from Peterhead.

Previous to the revolt of the North American provinces this fishery, as well as that in the Southern Ocean, was prosecuted with great spirit by the colonists of Massachussetts. Just before the beginning of the war they employed annually 183 ships of 13,820 tons in the northern, and 121 ships of 14,026 tons in the

southern whale-fisheries. The fisheries are still prosecuted by the people of New England with great success.

It was not until after the breaking out of war between England and the American provinces had, for a time at least, interrupted this spirit of enterprise, that England embarked in the southern fishery. In 1791 the number of English vessels so employed was 75; 1819 to 1823 above 100; and from 1830 to 1833 the number varied from 104 to 110. Since this period the number of ships employed has gradually fallen off; but the price of oil has long been rising, and is now double what it was twenty years ago. This, however, will probably not have much effect in increasing the number of vessels fitted out in this country for the southern whale-fishery, but it may give an impetus to the Australian fishery. By the Tariff of 1842 (5 & 6 Vict. c. 47) the duty on train blubber and sperm oil, the produce of foreign fishing, was reduced from a uniform rate of 26*l.* 12*s.* per ton to 6*l.* on train oil, and 15*l.* on sperm oil; but the alteration of duty did not take effect until July of the following year. In the period between 1832 and 1842 the highest value of the products of the southern whale-fishery imported into this country was 721,000*l.* in 1838.

It requires a considerable sum of money to fit out a ship in England for the southern whale fishery. A new vessel of the size usually employed—350 tons—costs, when ready for sea and fully provisioned, from 12,000*l.* to 15,000*l.*; and the adventurer must wait three years for the return of his capital.

In the three years 1830-31-32, and in three years 1841-42-43, the number of British ships and their tonnage, and British seamen of all ranks employed in the South Sea, Greenland, and Davis's Strait Fisheries, were as follows:—

South Sea Fishery.

	Ships.	Tons.	Men.
1830	32	9,682	924
1831	24	8,335	735
1832	35	12,066	1091
1841	13	4,836	404
1842	6	1,835	169
1843	9	3,096	262

Greenland and Davis's Straits.

	Ships.	Tons.	Men.
1830	91	30,484	4120
1831	86	28,137	4093
1832	81	26,147	3706
1841	19	5,742	897
1842	18	5,118	830
1843	25	6,971	1146

In 1840 the value exported from New South Wales of the produce of the whale fishery was 224,144*l.*, but the exports were considerably less in the two following years. In 1840 the quantity of sperm oil exported was 1854 tuns, black whale oil 4297 tuns, whalebone 250 tuns.

The whale fishery of the United States of North America is now greater than that of all other nations. Even on the coasts of our own colonies in Australia and New Zealand, the American whalers outnumber those of the English. What Burke said of the fisheries of the colonists of Massachusetts, in 1774, is applicable at the present day to their descendants employed in the southern whale-fishery: "Neither the perseverance of Holland, nor the activity of France, nor the dexterous and firm sagacity of English enterprise, ever carried this most perilous mode of hardy industry to the extent to which it has been pursued by this recent people." In 1843 the imports from the whole fishery into the United States, was 165,744 barrels of sperm, and 205,861 of whale oil, and 1,908,047 lbs. of bone. These imports gave employment to 193 ships and barques, 28 brigs, and 13 schooners (234 vessels); and their tonnage was 165,744 tons. The voyage of each vessel engaged in the sperm fishery averages three and a half years, and the whale fishery gave employment to 650 ships, barques, brigs, and schooners, which are manned by 17,500 seamen; and their aggregate tonnage amounts to 200,000 tons. The cost of these 650 vessels at the time of their sailing is estimated at twenty million dollars, and their annual consumption of stores, &c. is 3,845,000 dollars. The value of the annual imports of oil and whalebone in a raw state is estimated at seven million dollars. (*American Alm.*, Boston, 1845.)

The Chinese belonging to Hainan and

the neighbouring islands pursue the whale-fishery with considerable success near their own coasts. There is an account of this fishery in Simmonds' 'Colonial Magazine,' vol. ii. p. 237.

FLAG, the ensign or colours of a ship; from the Anglo-Saxon *fleogon*, to fly or float in the wind. Flags borne on the masts of vessels designate the country to which they respectively belong; and they are likewise made to denote the quality of the officer by whom the ship is commanded.

The supreme flag of Great Britain is the royal standard, which is only to be hoisted when the king or one of the royal family is on board the vessel: the second is that of the anchor on a red field, which characterizes the lord high admiral, or lords commissioners of the Admiralty: and the third is the union flag, in which the crosses of St. George, St. Andrew, and St. Patrick are blended. This flag is appropriated to the admiral of the fleet.

In the British navy a fleet is divided into three squadrons—the centre, the van, and the rear; the centre being distinguished by red colours, the van by white, and the rear by blue, and respectively commanded by an admiral, a vice-admiral, and a rear-admiral. When the fleet is very large, there are three divisions in each squadron: and each squadron has then its admiral, vice-admiral, and rear-admiral, who respectively hold the command of its centre, van, and rear divisions. [ADMIRAL, p. 27.]

The three flags are plain red, white bearing the red cross of St. George, and plain blue; and the ensign worn by the ship that carries a flag, as well as by every ship belonging to the same squadron, is always of the same colour as that of the flag-officer commanding it.

By 4 Will. IV. c. 13, § 11, it is enacted that if any person shall hoist, carry, or wear on board any vessel, whether merchant or otherwise, belonging to any of His Majesty's subjects, without particular warrant for so doing, His Majesty's Jack, commonly called the Union Jack, or any pendant, or any such colours as are usually worn by His Majesty's ships, or any flag, jack, pendant, or colour resembling those of His Majesty, or any ensign or colour whatever other than those prescribed by proclamation, the persons so offending are to forfeit a sum not exceeding 500*l.*; and every such flag, colour, &c. shall be forfeited.

FLOTSAM, or FLOATSAM, is such portion of the wreck of a ship and the cargo as continues floating on the surface of the water. Jetsam is where goods are cast into the sea, and there sink and remain under water; and Ligan is where they are sunk in the sea, but are tied to a cork or buoy, in order that they may be found again.

These barbarous and uncouth appellations are used to distinguish goods in these circumstances from legal wreck, in order to constitute which they must come to land.

Flotsam, jetsam, and ligan belong to the king, or his grantee, if no owner appears to claim within a year after they are taken possession of by the persons otherwise entitled. They are accounted so far distinct from legal wreck, that by the king's grant of wreck, flotsam, jetsam, and ligan will not pass.

Wreck is frequently granted by the king to lords of manors as a royal franchise; but if the king's goods are wrecked, he can claim them at any time, even after a year and a day. The same distinction, it is presumed, would prevail with respect to flotsam, jetsam, and ligan.

FOOTPATH. [WAYS.]

FOREMAN. [JURY.]

FORESTALLING, ENGROSSING, &c. *Engrossing* is the offence of purchasing large quantities of any commodity, in order to sell it again at a higher price. There are numerous statutes against this offence, and it was also an offence at common law. The English were not singular in this absurd species of legislation. They had the authority of the Athenians [CORN TRADE, ANCIENT, p. 667], who were as ignorant of the true principles of public economy as the most ignorant nation of modern times.

Forestalling, also an offence at common law, is described in a statute of Edward VI. to be the buying or contracting for any merchandise or victual coming the way to market; or dissuading persons from bringing their goods or provisions

there, or persuading them to enhance the price when there. There is something like authority for this in the Roman law. The Lex Julia de Annona imposed penalties on those who combined to raise prices.

"*Regrating*," says Blackstone, "was described in the same statute to be the buying of corn or other dead victual in any market and selling it again in the same market or within four miles of the place. For this also enhances the price of provisions, as every successive seller must have a successive profit." As to engrossing, Blackstone remarks: "this must of course be injurious to the public, by putting it in the power of one or two rich men to raise the price of provisions at their own discretion."

An exact definition of *Badgering* is not at hand; but the nature of this offence may be collected from the offences which it keeps company with.

Notwithstanding the reasons given by Blackstone, all these offences have been abolished by 7 & 8 Vict. c. 24, entitled 'An Act for abolishing the offences of forestalling, regrating, and engrossing, and for repealing certain statutes passed in restraint of trade.'

The preamble of the act is as follows:—"Whereas divers statutes have been from time to time made in the parliaments of England, Scotland, Great Britain, and Ireland, respectively prohibiting certain dealings in wares, victuals, merchandise, and various commodities, by the names of badgering, forestalling, regrating, and engrossing, and subjecting to divers punishments, penalties, and forfeitures persons so dealing: and whereas it is expedient that such statutes, as well as certain other statutes made in hinderance and in restraint of trade, be repealed: and whereas an act of the parliament of Great Britain was passed in the twelfth year of the reign of King George III., intituled 'An Act for repealing several Laws therein mentioned against Badgers, Engrossers, Forestallers, and Regraters, and for indemnifying Persons against Prosecutions for Offences committed against the said Acts,' whereby, after reciting that it had been found by experience that the restraint laid by several statutes upon the dealing in corn, meal, flour, cattle, and sundry other sorts of victuals, by preventing a free trade in the said commodities, have a tendency to discourage the growth and to enhance the price of the same, which statutes, if put in execution, would bring great distress upon the inhabitants of many parts of this kingdom, and in particular upon those of the cities of London and Westminster, sundry acts therein mentioned, and all the acts made for the better enforcement of the same, were repealed, as being detrimental to the supply of the labouring and manufacturing poor of this kingdom: and whereas, notwithstanding the making of the first-recited act, persons are still liable to be prosecuted for badgering, engrossing, forestalling, and regrating, as being offences at common law, and also forbidden by divers statutes made before the earliest of the statutes thereby repealed: for remedy thereof, and for the extension of the same remedy to Scotland and to Ireland, be it enacted," &c.

The second section repeals the several acts and parts of acts made in the parliaments of England and Scotland, Great Britain and Ireland, thereafter mentioned, but not so as to save any act repealed by any of the acts hereby repealed.

The English statutes which are repealed extend from the 51 Henry III. to the 5 & 6 Edward VI. c. 15.

The third section enacts, "That the several acts and parts of acts which were repealed, as to Great Britain, by the first-recited act of the twelfth year of the reign of King George III. shall be taken, after the passing of this act, to be repealed as to the United Kingdom of Great Britain and Ireland."

The fourth section provides, "That nothing in this act contained shall be construed to apply to the offence of knowingly and fraudulently spreading or conspiring to spread any false rumour, with intent to enhance or decry the price of any goods or merchandise, or to the offence of preventing or endeavouring to prevent by force or threats any goods, wares, or merchandise being brought to any fair or market, but that every such offence may be inquired of, tried, and punished as if this act had not been made."

Though the law against engrossing, forestalling, and regrating was, we believe, seldom enforced, the repeal of this mass of absurd legislation, and of the common law applicable to these so-called offences, is a proper measure, particularly as the ground of the repeal is that the statutes were "passed in restraint of trade." Trade therefore, it is admitted, should not be restrained by statutes; a principle which, if fully carried out, would add greatly to the prosperity of this country.

FOREST LAWS. On the establishment of the Norman kings in England, it has generally been supposed that the property of all the animals of chase throughout the kingdom was held to be vested in the crown, and no person without the express licence of the crown was allowed to hunt even upon his own estate. But this is rather a conjecture deduced from the supposed principles of feudalism, than a well-established fact. There are no laws respecting the forests among the laws attributed to the Conqueror; and perhaps all that we can affirm is, that after the Norman conquest the royal forests were guarded with much greater strictness than before; that their number was extended and possibly in some cases their bounds enlarged; that trespassers upon them were punished with much greater severity; and, finally, that there was established a new system of laws and of courts for their administration, by and according to which not only all offences touching the royal forests were tried, but also all persons living upon these properties were generally governed. This is the system or code that is properly called the forest laws. Yet even of this in its original integrity we have no complete or authoritative record; all our knowledge of it is derived from some incidental notices of the chroniclers; the vague though energetic language of complaint and condemnation in which it is repeatedly spoken of; the various legislative enactments for its reform which have been preserved; and the remnants of it which survived to a comparatively recent period.

The Conqueror is said to have possessed in different parts of England 68 forests, 13 chases, and 781 parks. Legally, forests and chases differ from parks in not being inclosed by walls or palings, but only encompassed by metes and bounds; and a chase differs from a forest, both in being of much smaller extent (so that there are some chases within forests) and in being capable of being held by a subject, whereas a forest can only be in the hands of the crown. But the material distinction is, or rather was, that forests alone were subject to the forest laws so long as they subsisted. Every forest however was also a chase. A forest is defined by Manwood, the great authority on the forest laws, as being "a certain territory or circuit of woody grounds and pastures, known in its bounds, and privileged, for the peaceable being and abiding of wild beasts, and fowls of forest, chase, and warren, to be under the king's protection for his princely delight; replenished with beasts of venery or chase, and great coverts of vert for succour of the said beasts; for preservation whereof there are particular laws, privileges, and officers belonging thereunto." The beasts of park or chase, according to Coke, are properly the buck, the doe, the fox, the marten, and the roe; but the term in a wider sense comprehends all the beasts of the forest. Beasts of warren are such as hares, conies, and roes; fowls of warren, such as the partridge, quail, rail, pheasant, woodcock, mallard, heron, &c. He afterwards however quotes a decision of the justices and the king's council that roes are not beasts of the forest, because they put to flight other wild beasts (eo quod fugant alias feras), which seems an odd reason; perhaps the word should be "fugiunt" (because they fly from other wild beasts). And he adds, "beasts of forests be properly hart, hind, buck, hare, boar, and wolf; but legally all wild beasts of venery." (Co.-Litt. sec. 387.)

For the antiquity of the royal forests in England, "the best and surest argument," says Coke, elsewhere (4 *Inst.* 319), "is, that the forests in England, being sixty-nine in number, except the New Forest, in Hampshire, erected by William the Conqueror, and Hampton Court Forest, by Henry VIII., and by authority of parliament, are so ancient,

as no record or history doth make any mention of their history or beginning." Yet it appears, both from the great charter of John, and from a previous charter granted by Stephen, that some lands had been afforested (as the term was) after the time of the two first Norman kings. "The forests," says Stephen, "which King William my grandfather, and William II. my uncle, made and held, I reserve to myself; all the others which King Henry superadded I render up and concede in quiet to the churches and the kingdom." And one of the concessions demanded from John and granted in Magna Charta (§ 47) was, that all the lands which had been afforested in his time should be immediately disafforested. No additional forests appear to have been made from the reign of John till that of Hampton Court was constituted by act of parliament in 1539 (31 Hen. VIII. c. 5). The name given to it in the statute is Hampton Court Chase; but it is enacted that all offenders in it shall incur such penalties as the like offenders do in any other forest or chase. It was therefore made a forest as well as a chase.

Many historians tell us that King John granted a charter of forests at the same time with Magna Charta. This is indeed distinctly asserted by Matthew Paris, who even professes to give the charter at full length. But the statement is entirely unfounded; the concessions obtained from John in regard to the royal forests are, as mentioned above, contained in the Great Charter: the Carta de Foresta, which M. Paris quotes, is a charter granted by Henry III. in the 9th year of his reign (A.D. 1224). This was the first separate charter of forests. It is commonly printed in the statutes from the Inspeximus, or confirmation of it, in the 28th of Edward I. (A.D. 1299). The subsequent legislation upon this subject is principally to be found in the following statutes:—The Customs and Assize of the Forest, or the Articles of Attachments of the Forests (of which the date is not known); the Ordinatio Forestæ of the 33 Edw. I. (1305); the Ordinatio Forestæ of the 34 Edw. I. (1306); the 1 Edw. III. c. 8 (1327); and the 7 Ric. II. c. 3 (1383).

One of the chief things insisted upon in the early national demand for the reform of the forest laws, was the mitigation of their severe code of punishments. The Conqueror, who, as the 'Saxon Chronicle' says, loved the red deer as if he had been their father, is affirmed to have visited the slaughter of one of these animals with a heavier penalty than the murder of a human being. And it would appear from the charter of Henry III. that the offence had previously been punishable not only with mutilation, but with death. "No man from henceforth," says the 10th clause or chapter of the charter, "shall lose either life or member for killing of our deer; but if any man be taken and convict for taking of our venison, he shall make a grievous fine, if he have anything whereof; and if he have nothing to lose, he shall be imprisoned a year and a day: and after the year and day expired, if he can find sufficient sureties, he shall be delivered; and if not, he shall abjure the realm of England." According to Matthew Paris (whose authority however, on such a matter, is not worth much), Richard I. had already repealed the penalties of mutilation for offences against the forest laws.

The forest laws, as already mentioned, were administered by their own officers and courts. The officers were the justices in eyre of the forest; the wardens or warders; the verderers, foresters, agisters, regarders, keepers, bailiffs, beadles, &c.

The four principal forests in England were accounted to be, the New Forest, Sherwood, Dean, and Windsor. Among the others were Epping, in Essex; Dartmoor in Devonshire; Wichwood, in Oxfordshire; Salcey, Whittlebury, and Rockingham, in Northamptonshire; Waltham, in Lincolnshire; Richmond, in Yorkshire, &c.

The oppressive powers vested in the crown by the forest laws, after having to a great extent long ceased to be exercised, were revived by Charles I., and endeavoured to be turned to account in replenishing his empty exchequer. At the Court of Justice-seat (which was the supreme forest court, and held every year before the chief justice in eyre of the

forest) held in 1632, before the earl of Holland as chief justice in eyre south of the Trent, large sums of money were extorted from many persons, chiefly as compositions for alleged encroachments on the ancient boundaries of the forests, although after a quiet possession of three or four centuries. This accordingly was one of the grievances to which the Long Parliament directed its earliest attention. One of the Acts which that assembly passed in its first session (the 16 Char. I. c. 16), was entitled 'An Act for the Certainty of Forests, and of the Meets, Meers, Limits, and Bounds of the Forests,' which set forth in the preamble, that not only judgments had of late been given by which the bounds of some of the forests had been variously extended, or pretended to extend, beyond the bounds commonly known, and formerly observed, to the great grievance and vexation of many persons having lands adjoining; but there had also been some endeavours or pretences "to set on foot forests in some parts of this realm and the dominion of Wales, where, in truth, none have been or ought to be, or, at least, have not been used of long time." It is therefore enacted that the bounds of every forest shall be those commonly known, reputed, used, or taken to be its bounds; and that all judgments, &c., to the contrary shall be void; that no place where no Justice-seat or other forest court had been held within sixty years should be accounted forest; and that commissions should be issued for ascertaining the bounds of forests as they stood in the 20th year of the preceding reign, and beyond which they should not thenceforth be extended. Since the passing of this Act, the old forest laws may be considered as having been practically abolished, and the offices connected with their administration and execution turned into little better than sinecures.

The 11th chapter of the Carta Forestæ of Henry III. contains the following curious provision:—"Whatsoever archbishop, bishop, earl, or baron, coming to us at our commandment, passeth by our forest, it shall be lawful for him to take and kill one or two of our deer, by view of our forester, if he be present; or else he shall cause one to blow an horn for him, that he seem not to steal our deer; and likewise they shall do returning from us as it is aforesaid." As this law is still unrepealed, any bishop or nobleman may shoot one or two of the deer if he should pass through any of the royal forests in going to or returning from parliament. Hunting was formerly so common or universal an episcopal amusement, that the crown is still entitled, at the death of every bishop, to have his kennel of hounds, or a composition in lieu thereof. Auckland Park, and certain other demesnes, formerly held of the bishop of Durham by forest services; "particularly," says Camden, "upon his great huntings, the tenants in these parts were bound to set up for him a field-house, or tabernacle, with a chapel, and all manners of rooms and offices; as also to furnish him with dogs and horses, and to carry his provision, and to attend him during his stay for the supply of all conveniences. But now all services of this kind are either let fall by disuse, or changed into pecuniary payments." [GAME LAWS; WOODS AND FORESTS.]

FORFEITURE, the punishment by loss of lands, estates, rights, offices, or personal effects, which is annexed by law to certain crimes, and also to certain illegal acts and neglect of duties in the holder of lands or offices.

Forfeiture is the French Forfaiture, which is from the word Forfait, "a crime." The verb Forfaire (Foris facere), is to do anything contrary to duty. Forfaiture, according to Richelet (*Dictionnaire*), is "a fault committed by an officer of justice, for which he ought to lose his office." The distinction between Escheat and Forfeiture is explained under ATTAINDER and ESCHEAT.

In criminal cases forfeiture is threefold:—1. Of real estates absolutely, as for high treason; if freehold, to the king; if copyhold, to the lord. 2. Of the profits of the real estate, if freehold, to the crown during the life of the offender, and a year and a day afterwards, in the case of petty treason or murder; after which the land escheats to the lord; if it is copyhold, it is at once forfeited to the lord. 3. Of goods and chattels, in all

cases of felony. Some other cases of forfeiture of lands or goods, or both, are established by different statutes, as the statutes of præmunire, &c.

Lands are forfeited upon attainder, and not before [ATTAINDER]: goods and chattels, upon conviction. The forfeiture of lands has relation to the time of the offence committed; the forfeiture of goods and chattels has not, and those only are forfeited which the offender has at the time of his conviction. A *bonâ fide* alienation of his goods and chattels made by a felon or traitor between the commission of the offence and his conviction, is therefore valid.

Forfeiture, in civil cases, takes place where a tenant of a limited, or, as it is called, a particular estate, grants a larger estate than his own, as where a tenant for life or years assumes to convey the fee-simple. So, if a copyholder commits waste, or refuses to do suit of court, or a lessee impugns the title of his lessor; for in all these cases there is a renunciation of the connexion and dependence, which constitute the tenure, and which are an implied condition annexed to every limited estate.

Forfeiture may also be the consequence of the breach of covenants between landlord and tenant, or persons connected in tenure; but in cases of forfeiture where compensation can be made for the breach of the condition, a court of equity will compel the party entitled to the forfeiture to accept compensation. The right to take advantage of a forfeiture may also be waived by any act of the person entitled which recognizes the continuance of the title in the particular tenancy, as, for instance, the receipt of rent by a landlord in respect of a time subsequent to the act by which the forfeiture is incurred.

Lands may also be forfeited by alienation contrary to law, as by alienation in mortmain without licence, or to an alien: in the former instance, if the immediate lord of the fee, or the lord paramount, neglect to enter, the king may; and in the latter, though the conveyance is effectual, yet as an alien cannot hold lands the king may enter, upon office found. [ALIEN; OFFICE FOUND.]

Offices are forfeited by the neglect or misbehaviour of the holders; and the right to the next presentation to ecclesiastical benefices is forfeited by Simony and by Lapse. [BENEFICE, p. 351; ADVOWSON, p. 48.]

The term Confiscation is not now used as a term of English law, but it was once in use, and was applied to those goods which were forfeited to the king's Exchequer. Goods confiscated, it is said, are generally such as were arrested and seized to the king's use, and therefore goods confiscated and goods forfeited are synonymous terms. If this explanation is right, Forfeiture is a more comprehensive term than Confiscation in English law.

Confiscation is from the Latin Confiscatio, which properly means the seizure of the property of an offender for the Imperial Fiscus, or the Imperial treasury: the property of the Roman Emperor, as Emperor, was expressed by the term Fiscus. Fiscus signifies a wicker basket: the word Hanaper (hamper) has the same meaning.

FORGERY, from the French *forger*, 'to heat metal and hammer it,' which is from the Latin *fingere*. From this sense of *forger* came the meaning "to make" generally, to invent. Legal forgery is the false making, counterfeiting, altering, or uttering any instrument or writing with a fraudulent intent, whereby another may be defrauded. The offence is complete by the making the forged instrument with a fraudulent intent, though it be not published or uttered; and the publishing or uttering of the instrument, knowing it to be forged, is punished in the same manner as the making or counterfeiting.

It is by no means necessary to bring the offence within the legal meaning of the term forgery, that the name of any person should be counterfeited, though this is the most common mode in which the crime is committed; thus a man is guilty of forgery who antedates a deed for the purpose of defrauding other parties, though he signs his own name to the instrument; and the offence is equally complete, if a man being instructed to make the will of another, inserts provisions of his own authority. In truth the offence consists in the fraud and deceit.

At common law the crime of forgery was only a misdemeanour, but as the commerce of the country increased and paper credit became proportionally extended, many severe laws were enacted, which in most cases made the offence a capital felony.

The extreme severity of these laws tended to defeat their object, and the parties very frequently chose rather quietly to sustain the loss inflicted upon them by the commission of the offence, than by a prosecution to subject the offender to the loss of life. This feeling, and the diffusion of the truth, that the object of all laws is to prevent crime and not merely to punish, has caused successive mitigations in the laws relating to forgery; and now by the statute 11 Geo. IV. and 1 Wm. IV. c. 66; 2 & 3 Wm. IV, c. 59, and 1 Vict. c. 84, the punishment of death is abolished in cases of forgery, and a punishment varying between transportation for life and imprisonment for two years, is substituted. (1 Hawkins, *P. C.*; Russell *On Crime*; Deacon's *Criminal Law*.)

The statute law on forgery in general applies to Scotland as well as to England.

FOUNDLING HOSPITALS are charitable institutions, which exist in most large towns of Europe, for taking care of infants forsaken by their parents, such being generally the offspring of illegitimate connexions. These institutions date from the Middle Ages, and were established for the purpose of preventing the destruction of children either by actual violence or by being exposed in the streets or highways. Among the Romans and other nations of antiquity, the exposure of children by poor or unfeeling parents was a frequent practice, and was not punished by the laws. After Christianity became the religion of the empire, it was forbidden by the Emperors Valentinian, Valens, and Gratian (*Cod.* viii. tit. 51 (52), 'De Infantibus expositis,' &c.). At the same time, the greater strictness of the laws concerning marriage and against concubinage, the religious and moral denunciations against unwedded intercourse, and afterwards the obligatory celibacy introduced among the clergy, and the severe penalties attending its infraction, all tended to increase the danger to which illegitimate infants were exposed from the sentiments of fear and shame in their parents. Child-murder and the exposure of children became nearly as frequent in Christian countries as they had been in heathen times, only the parents took greater care to conceal themselves; and humane individuals in various countries began to devise means to collect and provide for the forsaken infants found in the streets. In this, as in other acts of charity, ecclesiastics stood foremost. At Rome, Innocent III., in 1198, when rebuilding and enlarging the great hospital of S. Spirito, allotted a part of it to the reception of foundlings, several infants having been found drowned in the Tiber about that time. This asylum for the "esposti," or foundlings, was afterwards enlarged and endowed by subsequent popes, and the institution was adopted by degrees in other cities. It was thought that by providing a place where mothers might deposit their illegitimate children in safety without being subject to any inquiry or exposure, the frequent recurrence of the crime of child-murder would be prevented. For this purpose a turning box was fixed in an opening of the wall in a retired part of the building, in which the child being deposited by the mother in the night, and a bell being rung at the same time, the watch inside turned the box and took the infant, which from that moment was placed under the protection of the institution, was nursed and educated, and afterwards apprenticed to some trade or profession. Those parents who were in hopes of being able to acknowledge their child at some future time, placed a mark or note with it, by which it was afterwards known when they came to claim it, and it was then restored to them on their defraying the expense incurred for its maintenance.

In France the philanthropist Vincent de Paule, the founder of the Society of the Missions, in the first half of the seventeenth century, exerted himself to found an asylum for infants, which were at that time frequently left to perish in the streets of Paris. It was at first supported by private subscriptions, but afterwards was made a national establishment—

'Hôpital des Enfans trouvés.' Similar institutions were founded in other great French cities. In 1841 there were 70,838 illegitimate children born in France—about one thirteenth of the whole number of births; but in Paris the proportion is much greater, being one illegitimate child in every 2·7 births. Of the whole number of illegitimate children, about 58 out of every 100 are abandoned by their mothers and taken to the foundling hospitals, where nearly two-thirds of them die before they are a year old. (Guerry, *Statistique Morale de la France.*) In 1842, out of 10,286 births of illegitimate children, 8231 were abandoned by their parent or parents, and were sent to the foundling hospital. Mortality appears to be very great in most foundling hospitals of the continent, owing to carelessness, mismanagement, or want of sufficient funds for the administration of those institutions. The infants are given out to cheap nurses in the country, where a great number of them die. At the same time, it is remarkable that the number of illegitimate births has greatly increased over all Europe during the last forty years. (Benoiston de Châteauneuf, *Considérations sur les Enfans trouvés dans les principaux Etats de l'Europe*, 1824.)

In 1739 a charter was granted for establishing a foundling hospital in London. On the 26th of October, 1740, a house was opened in Hatton-Garden for the reception of twenty children not exceeding the age of two months. The regulations stated, that "no questions whatever will be asked of any person who brings a child, nor shall any servant of the house presume to endeavour to discover who such person is, on pain of being discharged." The number of applicants for the admission of children was so great that a balloting process was necessary in order to settle the choice of admission. In 1745 the western wing of the present hospital was opened, and the other two portions of the building were soon built. The applications so constantly exceeded the number which the funds would support, that application was made to parliament, and in 1756 the sum of 10,000*l.* was granted, and the governors of the hospital were empowered to form provincial establishments. At this period the institution was evidently popular. The act of application was rendered as little troublesome and disagreeable as possible. A basket was hung at the gate, and the only trouble imposed on parents was the ringing of a bell as they deposited their child. On the 2nd of June, 1756, when the new system began, 117 children were received, and before the close of the year the number of children that had been adopted by the institution was 1783. The governors did not yet see the consequences of their mistaken liberality. In June, 1757, they caused notices to be advertised in the newspapers, and placards to be posted in the streets, informing all who were concerned how liberally the hospital was thrown open to them. The number of children received in 1757 was 3727. In three years and ten months from June, 1756, the number of infants received into the hospital amounted to nearly 15,000. The conveyance of children from distant parts of the country to the foundling hospital had become a regular trade. It was proved that of eight children brought up by waggon from the country seven had died. Various abuses which, strange to say, had not been foreseen developed themselves. Vigilant overseers of the poor occasionally relieved the rate-payers by dropping into the basket at the hospital a child or two that they feared might become chargeable, or they frightened the mothers into the act when they had no desire to part with their offspring. Moreover, the institution had got into full play before anything like a system of regulations could be adopted for preserving the life and health of the foundlings, and there was even a scandalous want of wet-nurses. Out of 14,934 children received in less than four years, only 4400 lived to be apprenticed. The enormous errors which had been committed by the governors and by parliament were now palpably evident. In February, 1760, a resolution was passed by the House of Commons, which declared, "That the indiscriminate admission of all children under a certain age into the hospital had been attended with many evil consequences, and that it be discontinued;" but at this time there were nearly 6000

children in the institution, and parliament was bound to continue the grant until they were apprenticed. Between 1756 and 1771 there was voted a sum of 549,796*l.* towards the expenses of the hospital. The public also now perceived the evils inherent in such institutions, and popularity was succeeded by odium, so that the governors actually passed a resolution, though afterwards rescinded, to denominate the establishment 'The Orphan Hospital.' After this the governors proceeded more cautiously, restricted their exertions to the scope of their own funds, and sold their country hospitals. In 1801 the practice of taking children without inquiry on payment of 100*l.* was abolished.

The present modified character of the hospital as an institution for foundlings will be understood from the following extracts from the regulations now in force:—"No person need apply unless she shall have previously borne a good character for virtue, sobriety, and honesty." Application for admission must, in the first instance, be by petition, and this, properly filled up, must be presented personally at the ordinary periodical meeting of the committee of the institution. Inquiries are made into the poverty and good character of the applicant, the illegitimacy of her infant, the abandonment by the father, and the non-cognizance of the case by the parish authorities. The chairman of the committee questions the applicant as to the probability of her return to the paths of virtue on the event of her child being admitted, and the number of persons to whom her shame is known. The next step is to make inquiries into the truth of the applicant's statement. This delicate task is undertaken by the treasurer's clerk; and in performing it his instructions are not to divulge any of the facts with which he may have become acquainted. If the result of the investigation be satisfactory, the admission of the child is secured either at once, if there be a vacancy, or when a vacancy occurs. The number of children is limited to 360. On leaving her child the mother receives a certificate in return, to which is attached a private mark, by which the authorities of the hospital may, if requisite, subsequently recognise the child, and a corresponding mark is carefully attached to the child's clothing; but, as respects the mother, it is probable that the child is severed from her for ever, and that she will never again be able to recognise it. The child may be restored at a future time if the mother can give the most satisfactory proofs of her ability to maintain it; but this claim is of rare occurrence. Many devices are resorted to by mothers with a view to the future identification of their children; but the rules of the hospital are strict as to the severance being complete. The children are sent out to nurse until they are five years old at establishments which belong to the hospital at East Peckham, Kent, and at Chertsey. On attaining their fifth year they return to the hospital for their education, and at its completion they are apprenticed to some trade.

In 1841 the income of the London Foundling Hospital was rather more than 11,000*l.*; but it is said that in a few years, by the falling in of leases, the income will be not less than 50,000*l.*

In 1833 there were 8130 children maintained in three foundling hospitals in Ireland. By the Irish Poor Law Act (1 & 2 Vict. c. 56) the control of these establishments was given to the Poor Law Commissioners: the number of children was to be gradually reduced; and finally, the hospitals were to be converted into union workhouses, by which provision hospitals for foundlings are virtually abolished. The Dublin Foundling Hospital was erected in 1704, and was scandalously managed. A basket was placed on the outside of the gate for the reception of infants, and a bell was rung when they were deposited. The number of children received from 1785 to 1797 was 27,274; out of which number there died 13,120. In 1797 the admissions were 1922, and the deaths 1457. From 1799 to 1808 the admissions were 19,638, and the deaths amounted to 5043. The Dublin Hospital was supported by Parliamentary grants, and by an assessment on houses which realized 8000*l.* a year.

There are Foundling Hospitals in Eastern (Lower) Canada, and grants have

heretofore been made to them by the local legislature; but in 1845 it was officially stated that such grants would be discontinued. The Commissioners of Foundlings, &c. in the district of Quebec accordingly issued a notice which stated, that "persons have been placed at the different avenues leading to the depôt at the Hôtel-Dieu to prevent people from leaving clandestinely any children there.

FRANCHISE, a species of incorporeal hereditament. Franchise and liberty are used as synonymous terms, and their definition is a royal privilege, or branch of the king's prerogative, which is in the hands of a subject. Being therefore derived from the crown, such privileges must arise from the king's grant, though in some cases they may be held by prescription, which presupposes a grant. The kinds of them are various, and almost infinite, and may subsist in corporations, in one man, or in many, as co-tenants. (2 Blackstone, *Com.* 37.) A few instances may be mentioned: thus a county palatine is a franchise, and so are privileges given to corporate bodies, forests, chases, the right to wreck, deodands, estrays, &c. Franchises may be lost or forfeited by the parties who enjoy them, if they misuse their privilege or neglect to perform the requisite duties in respect of them; and if the owners are disturbed or incommoded in the proper exercise of their franchise, which is an injury known to the law as a disturbance of franchise, they may have remedy in a special action on the case; or where the franchise is to levy a toll, they may distrain for the amount alleged to be due. (3 Blackstone, *Com.* 236.)

FRANKALMOIGNE. This tenure is thus described by Littleton (§ 133): "Tenant in Frankalmoigne is when an abbot or prior, or another man of religion, or of holy church, holdeth of his lord in frankalmoigne; that is to say in Latine, *in liberam eleemosinam*, that is, in free almes. And such tenure beganne first in old time. When a man in old time was seised of certain lands or tenements in his demesne as of fee, and of the same land infeoffed, an abbot and his covent, or prior and his covent, to have and to hold to them and their successors in pure and perpetual almes, or in frankalmoigne; or by such words, to hold of the grantor, or of the lessor and his heires in free almes: in such case the tenements were holden in frankalmoigne." From this it appears that lands which are held by religious bodies or by a man of religion, are held by tenure; but neither fealty nor any other temporal service is due. The spiritual services which were due before the Reformation are thus described by Littleton (§ 135): "And they which hold in frankalmoigne are bound of right before God to make orisons, prayers, masses, and other divine services for the souls of their grantor or feoffor, and for the souls of their heires which are dead, and for the prosperity and good life and health of their heires which are alive. And therefore they shall do no fealty to their lord; because that this divine service is better for them before God than any doing of fealty; and also because these words (frankalmoigne) exclude the lord to have any earthly or temporal service, but to have only divine and spiritual service to be done for him."

On this section (§ 135), Coke has the following remark, which explains how most lands are now held by the clergy of the church of England and by spiritual corporations in England. "Since Littleton wrote, the lyturgye or book of Common Praier of celebrating divine service is altered. This alteration notwithstanding, yet the tenure in frankalmoigne remaineth; and such prayers and divine service shall be said and celebrated, as now is authorized: yea, though the tenure be in particular, as Littleton hereafter (§ 137) saith, viz. to sing a mass, &c., or to sing a *placebo et dirige*, yet if the tenant saith the prayers now authorized, it sufficeth. And as Littleton hath said before (§ 119), in the case of Socage, the changing of one kind of temporall services into other temporall services altereth neither the name nor the effect of the tenure; so the changing of spiritual services into other spiritual services altereth neither the name nor the effect of the tenure. And albeit the tenure in frankalmoigne is now reduced to a certaintie contained in the book of Common Prayer, yet seeing the original tenure was in

frankalmoigne, and the change is by generall consent by authority of parliament (2 Ed. VI. c. 1; 5 & 6 Ed. VI. c. 1; 1 Eliz. c. 2), whereunto every man is party, the tenure remaines as it was before." [ESTABLISHED CHURCH.]

The statute 12 Charles II., which abolished military tenures, expressly excepts tenure in frankalmoigne.

Those who hold lands in frankalmoigne must do the services for which these lands were given. These services are now determined, as Coke says, by the book of Common Prayer. The mode of compelling these tenants to do their duty is thus described by Littleton (§ 136): "And if they which hold their tenements in frankalmoigne will not, or fail to do such divine service (as is said), the lord may not distrain them for not doing this, &c., because it is not put to certainty what services they ought to do. But the lord may complain of this to their ordinary or visitour, praying him that he will lay some punishment and correction for this, and also provide that such negligence be no more done, &c. And the ordinary or visitour of right ought to do this," &c.

Since the statute of 18 Ed. I., called *Quia Emptores*, from the introductory words, there can be no gift in frankalmoigne except by the crown. This tenure, however, as Blackstone observes, "is the tenure by which almost all the ancient monasteries and religious houses held their lands; and by which the parochial clergy and very many ecclesiastical and eleemosynary foundations hold them at this day, the nature of the service being upon the Reformation altered, and made conformable to the purer doctrines of the church of England."

FRANK PLEDGE. [LEET.]

FRAUDS, STATUTE OF. [STATUTE OF FRAUDS.]

FRAUDULENT CONVEYANCE. [CONSIDERATION.]

FREE BENCH. [DOWER.]

FREEHOLD. [ESTATE.]

FREEDMAN. [SLAVE.]

FREEDOM. [LIBERTY.]

FREEMAN. [MUNICIPAL CORPORATIONS.]

FREE SCHOOL. [SCHOOL.]

FREE TRADE. [AGRICULTURE; CAPITAL; CORN TRADE, CORN TRADE ANCIENT; DEMAND AND SUPPLY; MONOPOLY.]

FREIGHT. [SHIPS.]

FRENCH ECONOMISTES. [POLITICAL ECONOMY.]

FRIENDLY SOCIETIES. These institutions, which, if founded upon correct principles and prudently conducted, are beneficial both to their members and to the community at large, are of very ancient origin. Mr. Turner, in his 'History of the Anglo-Saxons,' notices them in these words:—"The guilds or social corporations of the Anglo-Saxons seem on the whole to have been friendly associations made for mutual aid and contribution, to meet the pecuniary exigencies which were perpetually arising from burials, legal exactions, penal mulcts, and other payments or compensations." (See also Herbert's 'History of the Twelve Great Livery Companies,' vol. i. p. 1.)

By the 10 Geo. IV. c. 56 (as amended by the 4 & 5 Wm. IV. c. 40), Friendly Societies may be formed for providing relief to members, their wives, children, relations or nominees, in sickness, infancy, advanced age, widowhood, or other natural state of contingency whereof the occurrence is susceptible of calculation by way of average, or for any other purpose which is not illegal; the rules therefore may now provide for relief in case of loss by fire, or by shipwreck; substitutes if drawn for the militia; a weekly allowance if reduced to a workhouse, or imprisoned for debt, and for payment towards the expenses of the feast, &c. &c.; but, for all such purposes, the contributions must be kept separate and distinct from the payments which may be required, on account of relief in case of sickness, infancy, advanced age, widowhood, or other natural state of contingency, susceptible of calculation by way of average; or the charges must be defrayed at the time by extra subscription of the members. The money payable on the death of a member may be received by any person nominated by such member, and is not confined to his wife, child, or relation.

In 1773 a bill was brought into the

House of Commons for "the better support of poor persons in certain circumstances, by enabling parishes to grant them annuities for lives upon purchase, and under certain restrictions." The bill passed the Commons but was rejected by the Lords. A bill with a similar object met with the like fate in 1780. A bill introduced in 1793 by the late Mr. George Rose passed into a law (33 Geo. III. c. 54), which is known by his name, and was extensively acted upon. This act recited "that the protection and encouragement of Friendly Societies in this kingdom, for securing, by voluntary subscription of the members thereof, separate funds for the mutual relief and maintenance of the said members in sickness, old age, and infirmity, is likely to be attended with very beneficial effects," and it authorized persons to form themselves into a society of good fellowship, for the purpose of raising funds, by contributions or subscriptions, for the mutual relief and maintenance of the members in old age, sickness, and infirmity, or for the relief of the widows and children of deceased members. A committee of members was authorized to frame regulations for the government of the society, which regulations, after being approved by the majority of the subscribers, were to be exhibited to the justices in quarter-sessions, and if not repugnant to the laws of the realm, and conformable to the true intent and meaning of the act, were to be confirmed and made binding upon the subscribers.

Among other provisions, it was allowed to impose reasonable fines upon such members as should offend against the regulations; such fines to be applied to the general benefit of the society. By this act it was declared unlawful "to dissolve or determine any such society, so long as the intents or purposes declared by the society remain to be carried into effect, without the consent and approbation of five-sixths of the then existing members, and also of all persons then receiving or entitled to receive relief from the society on account of sickness, age, or infirmity." Societies thus constituted were relieved from the payment of certain stamp-duties, and were empowered to proceed for the recovery of monies, or for legal redress in certain cases, by summary process, without being liable to the payment of fees to any officer of the court; and to aid them, the court was required to assign counsel to carry on the suit without fee or reward.

In 1795 an act was passed which extended the privileges of Mr. Rose's act to other "benevolent and charitable institutions and societies formed in this kingdom for the purpose of relieving widows, orphans, and families of the clergy and others in distressed circumstances."

Several other acts were passed between 1795 and 1817 affecting the proceedings of these societies, but not in any matter of importance.

In 1817 the 'Savings-Bank Act' was passed, and under its provisions the officers of friendly societies were allowed to deposit their funds in any savings bank, by which means they got security for their property and a higher rate of interest than they could otherwise obtain. This act has been of essential benefit to these associations.

In 1819 another law was passed, making provisions for the further protection and encouragement of friendly societies, and for preventing frauds and abuses in their management; but as this and all other acts previously passed with the same object were repealed and superseded by the act of 1829 (10 Geo. IV. c. 56) which, with two acts passed in 1832 and 1834 (2 Wm. IV. c. 37, and 4 & 5 Wm. IV. c. 40), contain the law as it now stands for the regulation of friendly societies, it is unnecessary to detail here the alterations effected in 1819.

In the years 1825 and 1827 select committees were appointed by the House of Commons to consider the laws relating to friendly societies. The reports made by these committees prepared the way for the enactment of 1829, already mentioned, which, with the subsequent acts of 1832, 1834, and 1846, we now proceed to analyze.

The law of 1829 (10 Geo. IV. c. 56), in the first place, authorizes anew the establishment of societies within the United Kingdom, for raising funds for the mutual relief and maintenance of the

members. The members of such societies are to meet together to make such rules for the government of the same as shall not be contrary to the intent of the act nor repugnant to the laws of the realm, and to impose such reasonable fines upon the members who offend against any of such rules as may be necessary for enforcing them; and these rules, which must be passed by a majority of the members present, may be altered and amended from time to time by the same authority.

But before these original or amended rules shall be confirmed by the justices of the county at the general quarter-sessions, they must have inserted in them a declaration of the purposes for which the society is established, and the uses to which its funds shall be applied, stating in what shares and proportions, and under what circumstances any member of the society or other person shall be entitled to the same.

The above statute and the 5 Wm. IV. are amended by an act of 1846, the 9 & 10 Vict. c. 27. Under this act the purposes for which friendly societies may be formed have been more fully defined and multiplied. In general they may be established for any object, the contingency of which the probability may be calculated by way of average, and the legality of which the law officers of the crown will certify.

According to this act members may withdraw from societies at any time, if the rules do not prohibit such withdrawal, by the payment of arrears and the forfeit of future claims on the funds. In lieu of a barrister a registrar of friendly societies for England, Ireland, and Scotland is appointed to certify rules, and be paid a salary in lieu of fees. Returns of the rates of sickness and mortality, assets and liabilities, to be sent to the registrar every five years, under a penalty of 5*l.* on the officer neglecting. Rules, &c., heretofore filed with clerks of the peace, to be returned to the registrar. Registrar not to certify the rules of societies established subsequent to July 3, 1846, unless society has adopted tables of sickness and mortality certified by the actuary of the National Debt Office, or of some person who has been for five years an actuary to a Life Insurance Company in London, Edinburgh, or Dublin.

Before these directions are complied with, no society is entitled to enjoy any of the privileges or advantages communicated by the act; but when the rules shall have been enrolled, and until they shall have been altered and the like confirmation shall have attended such alteration, they shall be binding upon the members of the society, and a certified copy of them shall be received in evidence in all cases. The treasurer of each society must give bond to the clerk of the peace for the county, with two sufficient sureties, for the faithful performance of his trust, and must, on the demand of the society, render his accounts and assign over the funds of the society at the demand of a meeting of the members. The property of the society is to be vested in the treasurer or trustees of the society, who may bring and defend actions, "criminal as well as civil, in law or in equity," concerning the property, right, or claim of the society, provided they shall be authorized to do so by the vote of a majority at a meeting of the members.

In case any person shall die intestate whose representatives shall be entitled on his account to receive any sum from the funds of the society not exceeding 20*l.*, the treasurer or trustees may pay the money to the persons entitled to receive the property of the deceased, without its being necessary to take out letters of administration.

It is not lawful to dissolve any friendly society, so long as any of the purposes declared in its rules remain to be carried into effect, "without obtaining the votes of consent of five-sixths *in value* of the then existing members, and also the consent of all persons then receiving or then entitled to receive relief from such society; and for the purpose of ascertaining the votes of such five-sixths in value, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member, provided that no one member shall have more than five votes in the whole."

By 9 & 10 Vict. c. 27, s. 15, all dis-

putes between the managers and members, or their representatives, of any such society, for the settlement of which recourse must now be had to the superior courts in the respective countries, may be referred in writing to the several registrars; and where the subject matter in dispute does not exceed 20*l.*, it shall be so referred, unless the attorney or solicitor-general, or the lord-advocate in Scotland, shall certify that it ought to be decided by a superior court: the registrar, in case of reference, to have power to proceed *ex parte* on notice being given to the parties; the award to be final, and the proceedings not subject to any stamp duty.

There is no regulation for the payment of the registrars of Scotland or Ireland, but it is presumed that they are to be paid by fees as under the previous acts. The registrar of England, by s. 11, is to retain, out of the fees received by him, sufficient money to defray office-rent, the salaries of clerks, and all other incidental expenses, and to pay over the balance, if any, to the accountant of the consolidated fund, the accounts of the fees and their application being kept in the form from time to time prescribed by the commissioners.

Minors, if they act with the consent of parents or guardians, may become members of friendly societies, having authority to act for themselves on the one hand, and being held legally responsible for their acts on the other. A statement, attested by two auditors of the funds, to be made annually, of which every member may receive a copy on payment of a sum not exceeding sixpence.

Every friendly society enrolled under this act is obliged, within three months after the expiration of every five years, to transmit a return of the rate of sickness and mortality, according to the experience of the society during the preceding five years; such return to be made in a prescribed form to insure uniformity. These returns are directed by 9 & 10 Vict. c. 27, to be addressed to the registrar appointed to certify the rules of friendly societies, London.

The following are among the benefits derived from a Friendly Society being enrolled under the 10 Geo. IV. c. 56, as amended by 5 Wm. IV. and 10 Vict.:—1, The rules are binding, and may be legally enforced; 2, Protection is given to the members, their wives and children, &c., in enforcing their just claims, and against any fraudulent dissolution of the society; 3, The property of the society is declared to be vested in the trustee or treasurer for the time being; 4, The trustee or treasurer may, with respect to property of society, sue and be sued in his own name; 5, Fraud committed with respect to property of society is punishable by justices; 6, Court of Exchequer may compel transfer of stock, &c., if officer of society abscond or refuse to transfer, &c.; 7, Application may be made to Court of Exchequer by petition, free from payment of court or counsel's fees, &c.; 8, Disputes settled by reference to justices or arbitrators—order of justices or award of arbitrators final; 9, Power to invest their funds to any amount in savings' bank; 10, Power to invest their funds with the Commissioners for the Reduction of the National Debt, and to receive interest at the rate of 3*l.* 0*s.* 10*d.* per cent.; 11, Priority of payment of debts, in case officer, &c., of society become bankrupt, insolvent, has an execution, &c., against his property, or dies; 12, In case of death of members, payment may be made of sum not exceeding 20*l.*, without the expense, &c., of obtaining letters of administration; 13, Members are allowed to be witnesses in all proceedings, criminal or civil, respecting property of society; 14, Exemption of all documents, &c., from stamp-duty.

Societies thus constituted and privileged must be acknowledged to be a great improvement upon the old benefit clubs. Before these societies were regulated by statute, temptation was held out to obtain members by the smallness of the contributions, which proved in the course of years wholly inadequate to answer the demands that were then sure to arise, although the income of the society had at first, while the members continued young, been sufficient for the purpose. The mischief thus fell upon them when they had become old and infirm, and had no means of relieving

themselves from it: this evil is now prevented by the compulsory adoption of tables prescribing such rates of contributions and allowances as experience has demonstrated to be sufficient and equitable.

It is unnecessary to give the tables of contributions required from members of Friendly Societies, in order to insure to their members the benefits of such institutions, as every information respecting the establishment of Friendly Societies may be obtained, free of expense, on application, through a post-paid letter, to the "Registrar appointed to certify the Rules of Friendly Societies, London."

On the 20th of November, 1844, the number of friendly societies which had direct accounts with the Commissioners for Reduction of the National Debt was 428, and the amount of their deposits was 1,770,775*l.* There were besides, at the same date, 10,203 friendly societies which had the sum of 1,272,046*l.* invested in savings' banks.

FUNDS. [NATIONAL DEBT.]

FUNERAL. [INTERMENT.]

FUR TRADE. [HUDSON'S BAY COMPANY.]

G.

GAME-LAWS. These laws determine what birds and beasts are to be considered game, and impose penalties on those who unlawfully kill or destroy game. They are the remnant of the ancient forest-laws, under which the killing one of the king's deer was equally penal with murdering one of his subjects; or, as Sir W. Blackstone somewhat quaintly expresses it, "from this root has sprung a bastard slip, known by the name of the game-law, now arrived to and wantoning in its highest vigour, both founded upon the same unreasonable notion of permanent property in wild creatures, and both productive of the same tyranny to the commons; but with this difference, that the forest-laws established only one mighty hunter throughout the land, the game-laws have raised a little Nimrod in every manor" (iv. 416).

Some portion of the history of the game-laws in this country will be found under FOREST-LAWS, and WARREN, FREE. Game has constantly been a subject of legislation from the Conquest to the present time. The last general statute which relates to game (2 Wm. IV. c. 32) was enacted in 1831, and it repealed twenty-four acts, eight of which had been passed in the reign of George III. It is doubtful whether the evils of the game-laws have been much diminished by the act of 1831. Some of them are beyond the reach of legislative enactments. In the first place, however, we shall briefly show what are the principal statutory provisions relating to game.

Game is declared to include hares, pheasants, partridges, grouse, heath or moor game, black game and bustards. Snipe, quail, landrail, woodcock, and conies are not game, but they can only be taken or killed by certificated persons.

Woodcocks and snipes may be taken with nets or snares, and also rabbits, by the proprietor, in an enclosed ground, or by a tenant and his servant. A penalty not exceeding 2*l.* over and above the value of the bird is incurred for killing, wounding, or taking any house-dove or pigeon when the offence does not amount to a larceny (7 & 8 Geo. IV. c. 29).

Any person who purchases a certificate or licence may kill game upon his own land, or on the land of any other person with his permission. This important alteration of the law was effected so recently as 1831, by 2 Wm. IV. c. 32, before which time a person was required to be possessed of a qualification by estate or birth to entitle him to kill game. The statute 13 Richard II. c. 13, the title of which was, 'None shall hunt but they who have a sufficient living,' was the first introduction of a qualification to kill game. This statute prohibited laymen who had not lands or tenements of 40*s.* a year, and priests who had not 10*l.* a year, from taking or destroying deer, hares, or conies, upon pain of one year's imprisonment. By 3 Jac. I. c. 13, the qualification to kill game was increased to 40*l.* a year in land and 200*l.* in personal property. By 22 & 23 Car. II. c. 25, the qualification was limited to persons who had a freehold estate of 100*l.* per annum or a leasehold for 99 years of 150*l.* annual

value. Some personal qualifications were added, as being the son and heir apparent of an esquire. Persons who had not these qualifications were not allowed to have or keep game dogs. Certificates were first required to be taken out by persons qualified to kill game by the act 25 Geo. III. c. 50. The certificate itself, which costs 3*l.* 13*s.* 6*d.*, now gives a qualification. It must be taken out annually, and expires in July. A sportsman who refuses to show his certificate when demanded by collectors of taxes, gamekeepers, landlords, occupiers, and lessees, is liable to a penalty of 20*l.* Uncertificated persons sporting are liable to a penalty of 5*l.* for each offence, with additional penalties under the Certificate Act of 23l. 13*s.* 6*d.* But by the acts of 1848 the 11 & 12 Vict. c. 29, and c. 30, owner or occupier of enclosed grounds having a right to kill game thereon, in England or Scotland, is enabled himself or any one authorized by him in writing, to kill *hares* without taking out a game certificate.

The right which a certificate gives to kill game is subject to a number of restrictions. A certificated person is liable to a penalty of 5*l.*, with costs, for taking or killing game on Sunday or Christmas-day, and to a penalty not exceeding 20*s.* for each head of game taken or killed at the season when the pursuit of each kind of game is prohibited. He is subject to the general law of trespass for going upon another person's land. Generally speaking, the right of killing the game is reserved by the landlord, when he leases his land, and when this is the case the occupier of the land can neither kill game nor give permission to another person to do so. He is liable under § § 11, 12 of 1 & 2 Wm. IV. c. 32 to a penalty of 20*s.*, with costs, for every head of game killed by him or other persons authorized by him. The landlord when he reserves it may kill game on the tenant's land, or authorize any certificated person to enter on the land and kill game. The tenant may kill woodcocks, snipes, quails, landrails, or rabbits, on the land which he occupies, but he cannot authorize other persons to kill them. The person who has the right of killing the game, or the occupier of the land, or gamekeepers, or any person authorized by either of them, may require a person found trespassing in pursuit of game to quit the land, and to give his name and place of abode; and in case of refusal, the trespasser may be taken instantly before a magistrate, who may fine him 5*l.*; but if not brought before a magistrate within twelve hours, proceedings must be taken by summons or warrant. If five or more persons together trespass in pursuit of game, and any one of them be armed with a gun, and if threats or violence are used to prevent any authorized person from approaching them for the purpose of requiring them to quit the land, or to tell their names and abodes, every person so offending is liable to a penalty not exceeding 5*l.*, in addition to any other penalty with costs.

The law is very severe against persons not authorized, who take or destroy game by night. By 1 & 2 Wm. IV. c. 32, 'day-time' is to be deemed from one hour before sun-rise to one hour after sun-set. The 9 Geo. IV. c. 69, enacts, that if any person by night shall take or kill game or rabbits on any land, or shall enter therein with gun, net, engine, or other instrument, for the purpose, he shall, on conviction before two justices, be committed to hard labour in the house of correction for a term not exceeding three months, and, at the expiration of that period, find securities for twelve months, himself in 10*l.* and two others in 5*l.* each, or one security in 10*l.* In case of not finding sureties (and it is not a likely case that night-poachers should be able to find them), the offender may be further imprisoned six months. For a second offence the term of imprisonment is extended to six months, the sureties are doubled, and required for a period of two years. If the offender cannot find sureties, he may be further imprisoned for twelve months. The third offence is punishable with transportation for seven years, or imprisonment with hard labour in the house of correction for a term not exceeding two years. Offenders under this act may be apprehended on the spot by owners and occupiers of lands, their servants and assistants; and if they assault or offer violence with gun, club, stick, or

otherwise, they are liable to be transported for seven years, or to be imprisoned with hard labour for two years. The punishment for night-poaching is still more severe when three or more persons enter any land for the purpose of taking or destroying game or rabbits, armed with a gun, bludgeon, or other offensive weapon, and they are subject to transportation for a period not exceeding fourteen years, or to imprisonment with hard labour for not exceeding three years. In 1844 an act was passed (7 & 8 Vict. c. 29) which extended the provisions of 9 Geo. IV. c. 69, against night-poaching to persons who take or kill game or rabbits upon public roads or highways, and other roads and paths leading to enclosed gates, and also at the gates, outlets, and openings between such lands and roads or paths.

By § 36 of 1 & 2 Wm. IV. c. 32, it is enacted, that if any unauthorized person be found by day or night on any land in search of game, and have in his possession any game which "appear to have been recently killed," any authorized person, as gamekeepers, occupiers, or others who have the right of killing the game, may demand such game and seize it if not immediately delivered.

A penalty not exceeding 10*l.* is incurred for laying poison with intent to destroy game (1 & 2 Wm. IV. c. 32).

If any person who is not authorized to kill game himself, or who has not permission from a person who has such right, shall take out of the nest or destroy the eggs of any bird of game or of any swan, wild duck, teal, or widgeon, or shall knowingly have in his possession any such eggs so taken, he shall be liable on conviction to a penalty not exceeding 5*s.* with costs for each egg. (1 & 2 Wm. IV. c. 32, § 24.)

By the act 7 & 8 Geo. IV. c. 29, it is felony to course, hunt, snare, carry away, kill, or wound, or attempt to kill or wound, any deer kept in any enclosed land, whether forest, chase, or purlieu, or other place wherein deer is usually kept. The punishment is transportation for seven years, or imprisonment for two years. If the offence be committed in the uninclosed part of a forest, chase, &c., the penalty for the first offence is a sum not exceeding 50*l.*: and for a second offence, transportation or imprisonment.

Such are the principal legal provisions respecting game which exist at the present day. This right of appointing persons called game-keepers, who are, properly speaking, a game police, does not belong to all owners of lands. Gamekeepers were first allowed to be appointed by 22 & 23 Car. II. Before the act 1 & 2 Wm. IV. c. 32 was passed, a person could only appoint one gamekeeper. By this act lords of manors may appoint one or more gamekeepers to preserve or kill game within the manor for their own use. Lords of manors may depute any person to be a gamekeeper to a manor, with authority to kill game for his own use or that of any other person named in the deputation. The gamekeepers are authorized to seize all dogs, nets, and other engines used for killing game by uncertificated persons.

Until the passing of the act 1 & 2 Wm. IV., c. 32, no person was allowed to sell game; but it was made saleable by this act, as the law was systematically evaded. A dealer in game must obtain an annual licence from the justices, who hold a special session in July for the purpose of granting such licences. Innkeepers, victuallers, retail beer-sellers, guards, coachmen, carriers or higglers, or persons in the employ of any of these classes of persons, are prohibited from dealing in game. Licensed dealers who buy game of any person not authorized to sell it are liable to a penalty of 10*l.* with costs. A person not being licensed, who buys game of an unlicensed person, subjects himself to a penalty not exceeding 5*l.* for each head of game, with costs.

The preservation of game is an object of constant solicitude to nearly all those who belong to the landed gentry in this country. The pursuit of game is not only followed for the sport which it affords, but because ideas derived from the feudal times still attach a social distinction to the right of killing birds and beasts of game. It is only fifteen years since this privilege was acquired only by property or birth. It is still sufficiently restricted to confer upon

those who enjoy it a petty importance to which common-minded persons may attach some value. Within the last fifty years game has been preserved to an excess which was previously unknown. Most of the laws relating to game which have been passed within this period have been to enable game preservers to indulge in this taste, and to visit with greater severity those who are tempted by the abundance of game to become poachers. The accumulation of game in preserves, watched and guarded by numerous keepers, has led to changes in the modes of sporting. The sportsman of the old school was contented with a little spoil, but found enjoyment in healthful recreation and exercise, and was aided by the sagacity of his dogs. In the modern system of battue-shooting, the woods and plantations are beaten by men and boys; attendants load the sportsman's guns, and the game is driven within reach of gun-shot, and many hundred heads of game are slaughtered in a few hours. The true sportsman would as soon think of spoiling a poultry-yard. Battue-shooting is the end of excessive game-preserving; and in this so-called sport, members of the royal family, ministers of state, and many of the aristocracy eagerly participate. In an ordinary day's sport of this description, seven or eight hundred head of game will be killed by three or four sportsmen in about four hours, and perhaps fifty or sixty wounded will be picked up on the following day. A couple of gentlemen will kill nine hundred hares in one day. On a great field-day, when the sportsmen are more numerous, the slaughter is immense. Whole waggon-loads of hares are sent off to the London and other great markets for sale, as the result of one day's sport.

The effect of protecting game by oppressive laws is, perhaps, more injurious to the morals of the rural population than any other single cause. The gentry of England are distinguished by many good qualities; but the manner in which many of them uphold their amusements at the cost of filling the gaols with their poor neighbours, who acquire those habits which lead to the ruin of themselves and families, is a blot on their character which has yet to be wiped off. With a densely crowded population, thousands of whom are often pressed by hunger, and frequently in a state of the most lamentable poverty, the temptation to kill game is irresistible. It swarms before the labourer as he returns home in the evening from his long day of hard toil. *He* does not recognize property in game. No man can claim an individual hare or partridge like an ox or a sheep. The latter must be fed at the expense of their owners: but game is fed by no one in particular. This man, then, who probably would not, for all his poverty, violate the laws of property in the case of poultry, and who at the bottom recognizes no greater right of property in a partridge than in a sparrow, sets a snare in the haunts frequented by game near his cottage, and is pounced upon by the keeper. When he comes out of the gaol, often the training school for profligacy—the farmers perhaps dare not employ him lest they should offend the game-preservers their landlords. The justice and the rural police look upon the gaol-bird with suspicion; and only at the beer-shop, with men of his own stamp and character, does he feel at home. It is hardly necessary to sketch his further progress. In nine cases out of ten, it is from bad to worse: and this because for objects of selfish gratification men have given to a bird or beast of little worth in itself an arbitrary value, and protected it by statutory regulations stricter than are applied to many other things which are recognised as objects of property by all mankind.

The number of persons convicted at assizes and sessions in 1843, for infractions of the game-laws in England and Wales, was 4,529, of whom 40 were transported. Between 1833 and 1844, there were 41 inquests on game-keepers found dead, and in 26 cases verdicts of wilful murder were returned. In 1843, out of 201 persons summarily convicted in Bedfordshire, 143 were committed for poaching, and sentenced to prison for an average period of seven weeks each. In the same year, out of 539 persons committed to the county

gaol for Buckinghamshire, 169 were for offences against the game-laws. The wives and families of these men must be maintained during the husband's imprisonment; and hence the poor-rates and the county-rates are at the same time increased. Gaols require to be enlarged; and as poaching leads to other crimes, a more extensive police is required for the protection of property. The time of this force is not a little taken up in preventing, detecting, and apprehending poachers. The game-laws are in this way a heavy burden on the occupiers of land.

The total expenditure which the preservation of game occasions is probably more onerous than that which is required for the support of the immense mass of pauperism which exists in this country. Game, and the game-laws, are among the greatest hindrances to the improvement of agriculture. They not only prevent a gain, but they occasion a loss to the actual aggregate of agricultural products.

Many landowners in their enthusiasm respecting game take means to ensure its preservation which none but tenants in a wretched state of dependence would submit to. The tenant is not allowed to use his best skill in the application of his own capital to the land, but is interfered with on account of the game. This game devours the produce of the land, is fattened at the tenant's expense (compensation for the destructiveness of game being generally futile and deceptive), and the landlord pockets the money which the game thus fed produces in the market. The effect would be far less injurious if the landlord turned a certain proportion of his oxen and sheep to feed with those which belong to his tenants. There are instances where the landlord lets the game on the tenant's land to a third person, and thus gets two rents, one for the land, and another rent for the game after it has been fed by the farmer.

It has often been stated that from three to five hares eat and destroy as much as would keep one sheep. On many farms the number of hares average at least two per acre; and the destruction by hares alone is often equal to an additional rental of 10*s.* per acre on the whole of the farm: there is, besides, the waste and destruction caused by rabbits, pheasants, and partridges. On some farms of 500 acres where the game is strictly preserved, but not excessively, the loss caused by hares will often amount to above 200*l.* The landlord sells the hares at perhaps 1*s.* 6*d.* each, and pockets 75*l.* This is short-sighted enough, setting aside the bad moral effect of the practice. The operations of the poacher, if he escape detection, are in one sense beneficial to the tenant-farmer, for the destruction of the game adds to the farmer's profit; but if the poacher be convicted and sent to gaol, then the support of the man and his family adds to the loss which the game occasions.

Many of the reservations and covenants in leases in relation to game are fit only for the copyholders of a manor four or five centuries ago. There are many farms on which the tenants are forbidden either to mow wheat or drill turnips. Mowing costs less than reaping, and the tenant has besides the advantage of an extra quantity of straw for the stock and for manure; but then the ground is left too bare to shelter the partridges, and therefore the scythe must not be used, nor any other instrument which cuts lower than twelve inches. Drilling turnips is now an essential operation in all good systems of farming; but though it gives a much greater weight of roots per acre, it encourages the birds to run, and spoils sport. In some districts, where game is preserved with great strictness, a farmer is not allowed to sow winter tares. To drain land where rabbits are kept would be a waste of property. Legislation cannot produce any improvement in this state of things. It arises from the dependent condition of the great majority of the tenant farmers; and if a law were passed which gave them the right to kill the game on their lands it would be of no advantage to them. The gamekeepers and other retainers of the great and small game-preservers are spies on the tenant, and in the intense competition for farms he dare not contravene the wishes of his landlord. Public opinion may and does produce some effect on the landlord's exercise of his power, but this is confined to isolated cases.

The administration of the game-laws in England is in the hands of persons who are either game-preservers themselves, or who, generally speaking, are not unfavourable to the system, and hence the rigour with which offences against the law are visited. Impartiality is scarcely to be expected when those who sit in judgment have to decide upon offenders against their own cherished privileges. Before the act 1 & 2 Wm. IV. c. 32 was passed, penalties for infractions of the game-laws could be recovered before one justice; but now conviction can only take place before two justices, and an appeal lies to the quarter-sessions, but a certiorari is not allowed. There was no appeal formerly, and great obstacles were thrown in the way of obtaining a certiorari.

On the 27th of February, 1845, on the motion of Mr. Bright, M.P. for Durham, a select committee was appointed to inquire into the operation of the game-laws. At the close of the session the committee reported that they had not concluded their inquiry, and it was to be resumed in the session of 1846. Certain members of the committee voted against printing the evidence already taken, and when the chairman, who had given notice of his intention, was about to bring the question before the House, the House was counted out. The evidence therefore could not be printed before 1846.

The number of certificates taken out annually to kill game is about 40,000 in Great Britain, and the number of licences to sell game about 800.

In other countries, as well as in England, game-laws have been an instrument of oppression. In France before the first revolution there were edicts for preserving game which "prohibited weeding and hoeing, lest the young partridges should be disturbed; steeping seed, lest it should injure the game; manuring with night soil, lest the flavour of the partridges should be injured by feeding on the corn so produced; mowing hay, &c. before a certain time, so late as to spoil many crops, and taking away the stubble which would deprive the birds of shelter." (Arthur Young's *Travels in France in* 1787-88-89). The tyranny of the manorial courts rendered it hopeless to escape from this oppressive system. The Constituent Assembly abolished this exclusive "droit de la chasse," which the seigneurs arrogated to themselves. Offences against the game-laws in France are now few and simple, and the punishment trivial.

GAMING, or GAMBLING, is an amusement, or we might properly call it a vice, which has always been common in all civilized countries and among all classes, but more particularly those who have no regular occupation. A passion for gaming is not confined to the nations called civilized: wherever men have much leisure time and no pursuit which will occupy the mind and stimulate it to active exertion, the excitement of gaming, which is nothing more than the mixed pleasure and pain arising from the alternations of hope and fear, success and failure, is a necessity which all men feel, though in different degrees, according to the difference of temperament. The Germans, says Tacitus (*De Moribus Germanorum*, c. 24), stake their own persons, and the loser will go into voluntary slavery, and suffer himself to be bound and sold, though stronger than his antagonist; and many savage nations at the present day are notoriously addicted to gambling. Gaming has been described by Cotton, an amusing author who wrote in the beginning of the last century, as "an enchanting witchery gotten betwixt idleness and avarice." Besides the pleasure derived from the excitement that attends games of chance, there is no doubt that the desire to enjoy without labour is one motive which operates on a gambler; but this motive operates more on those who are practised gamesters than on those who are beginning the practice; and instances are not wanting of men strongly addicted to gaming, who have yet been indifferent to money, and whose pleasure has consisted in setting their property on a die.

In France, and many other parts of the Continent, government has derived a considerable revenue from games of chance. In Paris, the exclusive right of keeping public gaming-houses was, until the year 1838, let out to one company, who paid an annual sum of 6,000,000 francs (about 240,000*l.*) for the privilege. They kept

six houses, namely, Frascati's, the Salons, and four in the Palais Royal. In a trial in Paris, it came out in the course of the evidence, that the clear profit for 1837, exclusive of the duty, had been 1,900,000 francs (76,000*l.*), of which three-fourths was paid to the city of Paris, leaving the lessee 19,000*l.* for his own share. The average number of players per day was stated at 3000, and about 1000 more refused admittance. The games played were chiefly Roulette and Rouge-et-Noir, of which the latter is the favourite. It is very seldom that large sums are staked at Roulette, as the chances against the player are considered immense by *professional* men, a class of gentlemen who are gamblers by profession. Rouge-et-Noir is played with four packs of cards, and the 'couleur' which is nearest 31 wins; the black being dealt for first, and then the red. All the houses were open from one o'clock in the afternoon till one or two after midnight; and latterly till five or six in the morning. The highest play, especially at Frascati's, was carried on between three and six in the afternoon. Ten or twelve thousand francs were constantly lost at a sitting, and once within these few years 100,000 francs, which constituted the 'Banque' of the day, was won by a French nobleman. The actual chance of the table or 'Banque' is considered to be 7½ per cent. above that of the player, supposing the game to be fairly played, as it no doubt was in Paris, under the old system; the cards being examined and stamped by the government, and there being an agent of the police always present and ready to detect any attempted fraud on the part of the company. But admitting the game to be fairly played, the coolness of the 'croupiers' or dealers, who had no interest at stake (the whole of the losses or gains being taken by the company), and the large capital of the latter, made it absolutely impossible for the player to win, in the long run; nay, it is clear that he must lose, and in that proportion to his stake, which probably is regulated by his means. Nevertheless, under the influence of those causes which first lead men to gaming, confirmed by habit and example, they still continue to indulge their passion till they are reduced to beggary, which is often followed by suicide.

That a vice which causes so much wretchedness should not merely be permitted and superintended by the government, but that it should contribute considerably to the public revenue, has been a subject of loud complaint in France; and at last the ministers, in compliance with the desire of the Chamber of Deputies, determined to grant no more licences after the 1st of January, 1838.

In this and in many other difficult questions, as to how far and in what manner a state should interfere with the acts of its citizens, many zealous advocates for change and reform do not perceive the great distinction between making an enactment or establishing some practice with reference to a certain end, and repealing the same enactment after it has been long in force. The reasons which would be good reasons for not making such enactment, may also, either in their whole extent or to some extent, be good reasons for not repealing such enactment when once in force, or not discontinuing such practice when once established.

In England, before the passing of 8 & 9 Vict. c. 109, the law considered wagers in general as legal contracts, and the winner of a wager could enforce his claim in a court of law. The exceptions to this rule were, where the wager was an incitement to a breach of the peace or to immorality; where it affected the feelings or interests of third persons, or exposed them to ridicule or inconvenience; or where it was against sound policy or prohibited by statutory enactment. In cases not comprehended within the above exceptions the judges frequently refused to try actions respecting wagers when they considered the matter to be of a frivolous or of an improper nature.

In Scotland the courts followed an opposite rule to that which prevailed in England. They held that "they were instituted to try adverse rights, and not to determine silly or impertinent doubts or inquiries of persons not interested in the matters in question;" and they decided "that their proper functions are to enforce the rights of parties arising out

of serious transactions, and not to pay regard to *Sponsiones ludicrae.*"

In 1844 a select committee of the House of Commons on gaming recommended that "wagering in general should be free and subject to no penalty;" and they also expressed an opinion in favour of the law of England being assimilated to that of Scotland.

In the session of 1845 the act 8 & 9 Vict. c. 109 was passed, which enacts "That all contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void; and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made: provided always, that this enactment shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute, for or toward any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise."

By 16 Charles II. c. 7, any person who won any sum of money by fraud, cosenage, or deceit was to forfeit treble the value won. Under 8 & 9 Vict. c. 109, cheating at play is to be punished as obtaining money under false pretences.

The act 16 Charles II. c. 7 was also designed to repress excessive gaming by restraining it to playing for ready money. By § 2 it was provided that if any person shall play or bet, &c. other than with or for ready money, and shall lose any sum, &c. exceeding 100*l.* at any one time or meeting, upon ticket or credit, or otherwise, and shall not pay down the same at the time, the party losing shall not be compelled to pay; any contract or securities for the payment are declared void; and the person winning shall forfeit treble the value. This act is repealed by 8 & 9 Vict. c. 109.

The act 9 Anne, c. 14, also prohibits all gaming or betting on any game on credit, and enacts that any person who shall at any one time or sitting, by playing at cards, dice, or other game whatsoever, or betting on the sides of such as do play, lose to any one or more persons in the whole the sum or value of 10*l.*, and shall pay the same or any part thereof, may within three months sue for and recover the same; and if the loser do not within three months sue for the same, any other person may sue and recover with treble the value of the wager, and costs. This act made void all notes, bills, bonds, mortgages, and other securities or conveyances whatever given for gaming debts; but by 5 & 6 Wm. IV. c. 41, bills and mortgages given for such debts were not void, but were made recoverable by action at law as if they had been given for an illegal consideration. Other descriptions of securities mentioned in 9 Anne, c. 14, and also in 16 Charles II. c. 27, were not affected by the act 5 & 6 Wm. IV. c. 41.

It was enacted by 13 Geo. II. c. 19, that no horse-race shall be run for any prize less than 50*l.* in value. According to the decision of the courts, a wager was illegal when the race was for a stake of less than 50*l.* The above act of 13 Geo. II. was repealed so far as relates to horse-racing by 3 & 4 Vict. c. 5. The 18 Geo. II. c. 34, was an act similar to the one of 13 Geo. II. It was designed "to explain, amend, and make more effectual the laws in being to prevent excessive and deceitful gaming, and to restrain and prevent the excessive increase of horse-races," and contained a clause to the effect that nothing contained in the act should repeal or invalidate the act 9 Anne, c. 14, which prohibited betting for sums exceeding 10*l.* The later statutes (13 Geo. II. c. 19, and 18 Geo. II. c. 34), however, made it lawful for horses to run for a stake of 50*l.*, and were therefore inconsistent with the statute of Anne, and must be considered as having so far superseded it; but as respects betting on horse-races the statute of Anne was not affected.

The provision of the statute of Anne against bets exceeding 10*l.* was so much a dead letter, that its existence appears to have been almost forgotten, until in 1843 a number of actions were brought by common informers against several noblemen and gentlemen who had violated the law by betting sums of more than 10*l.* on horse-races. On the plea that they were

ignorant of the law which they had broken, a bill was brought in early in the session of 1844, for the relief of these persons, and was passed through its several stages with an alacrity which excited some attention at the time. The act is c. 3, 7 Vict., and it was entitled 'An Act to stay proceedings for three calendar months, and till the end of the present session of Parliament, in certain actions under the provisions of several statutes for the prevention of excessive gaming, and to prevent any proceedings being taken under those statutes during such limited time.' Select committees were appointed in both Houses of Parliament to inquire into the laws respecting gaming, and another act (7 Vict. c. 7) was passed to indemnify witnesses implicated in gaming transactions who should give evidence before these committees. Before the session was over, and to prevent the consequences of the act 7 Vict. c. 3 being allowed to expire, another act was passed (7 & 8 Vict. c. 58) which further stayed proceedings in the actions for gaming.

It is to be observed that the act 8 & 9 Vict. c. 109, repeals those parts of 9 Anne, c. 14, and 18 Geo. II. c. 34, which rendered it illegal to win or lose any sum exceeding 10*l.* at play or by betting; and there is a clause under which all actions and informations commenced previous to this act under former statutes against gaming are to be discontinued on payment of costs.

The act 7 Geo. II. c. 8, which was made perpetual by 10 Geo. II. c. 8, entitled 'An Act to prevent the infamous practice of stock-jobbing,' is violated hourly on the London Stock-Exchange by the practice of time-bargains.

The acts 19 Geo. II. c. 37, and 14 Geo. III. c. 48, are intended to prevent transactions of the nature of gaming or wagering on policies of marine and life insurance.

Various acts were passed at different times for suppressing lotteries not allowed by law, and at length the state lotteries themselves were put an end to.[LOTTERY.]

All gaming-houses are regarded as nuisances at common law, and those who keep them are liable at common law (independently of statutory provisions) to be indicted and punished by fine and imprisonment at discretion.

The statute 33 Hen. VIII. c. 9 entitled 'The bill for the maintaining artillery and the debarring of unlawful games,' prohibits the keeping for gain, lucre, or living, any house or place of "bowling, coyting, cloysh-cayls, half-bowl, tennis, dicing-table, or carding, or any other manner of game prohibited by any statute heretofore made, or any unlawful game now invented or made, or any other new unlawful game then or hereafter to be invented, found, had, or made," on pain of forfeiting 40*s.* a-day. The same statute imposes a penalty of 6*s.* 8*d.* for every time upon any person using such houses and there playing.

By 8 & 9 Vict. c. 109, public billiard and bagatelle boards are not to be kept without a licence, and the places where they are kept are to be closed entirely on Sundays, and on other days at midnight, except Saturday, when the hour of closing is fixed at eleven o'clock.

The act 8 & 9 Vict. c. 109, greatly facilitates proceedings against any common gaming-house, by enacting that in default of other evidence it shall be sufficient to prove that such house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others, or that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet; and every such house or place shall be deemed a common gaming-house. It is not necessary under this act to prove that any person found playing at any game was playing for any money, wager, or stake. The act dispenses with the necessity of obtaining the allegation of two householders that any house is a common gaming-house; and provides, that on the report of a superintendent of metropolitan police, it shall be lawful for either of the commissioners of police to authorize the superintendent by a written order to enter any house or room with constables, and, if necessary, to use force for the purpose of effecting such entry, whether

by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize and destroy all tables and instruments of gaming found in such house or premises, and also to seize all monies and securities for money found therein. If any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game be found in any house or room which the police have entered as a suspected gaming-house, or about the person of any of those who shall be found therein, it shall be evidence until the contrary be made to appear, that such house or room is used as a common gaming-house, and that the persons found in the room where such instruments of gaming shall have been found, were playing therein, although no playing was actually going on in the presence of those who made the entry. Before this act was passed, persons found in a gaming-house could not be searched; and proof of play was necessary before entry. In all other places out of the metropolitan police district the justices may by warrant empower constables to enter gaming-houses. Witnesses who have been concerned in unlawful gaming are indemnified.

The punishment which may be inflicted on gaming-house keepers in addition to the penalties mentioned in 33 Hen. VIII. c. 9, are a penalty not exceeding 100*l.* or imprisonment with or without hard labour for a term not exceeding six months.

Gambling in the palace where the king resides for the time being, is excepted both in the statute of Anne c. 14, and of Geo. II. c. 34.

By 5 Geo. IV. c. 83, persons betting &c. in any street or open and public place are punishable summarily as rogues and vagabonds.

On the night of the 8th of May, 1844, a simultaneous entry was made by the police into all the common gambling-houses, seventeen in number, which were then known to exist in the metropolitan police district. Gambling is also carried on in the metropolis at places where billiard tables are kept, at public-houses, and also at cigar-shops. The evidence taken before the select committees on gaming in 1844 contains a mass of information on the subject of gaming and gambling both in London and elsewhere.

In most parts of Germany gaming is allowed; and the magnificent saloons set apart for roulette and rouge-et-noir at Baden and other German watering places, are well known to English travellers on the Continent. The respective princes of the states in which these fashionable gaming-places exist derive a large revenue by letting the exclusive privilege of keeping gaming establishments.

In the United States of America, but more particularly in the southern States, the practice of gambling is very common, though restrained, we believe, in all the States by legislative enactments. In the state of New York, wagers are considered a good ground of an action. In Pennsylvania the Supreme Court has decided that no action can be maintained to recover money lost by any wager or bet.

Gaming (alea) among the Romans was played with dice. The earliest enactment against it is referred to by Plautus and Cicero; but it is not certain what the penalty was. Under the late republic and the empire gaming was a common vice, but it was considered to be disreputable. The little that is known of the penalties against gaming is contained in the Digest (xi. tit. 5) and the Code o Justinian (iii. tit. 43). The praetor in this, as in many like cases, placed the encourager of gaming under disabilities. If a man lent his house for gaming, and, while the gaming was going on there, was beaten or had anything stolen from his house, the praetor refused him all remedy. A Senatus consultum, the name and time of which are not mentioned, prohibited all playing for money, except the stake was made upon the five athletic exercises enumerated; and, as we must infer, by the persons who joined in the exercises. If a slave, or a son in the power of his father, lost money at gaming, the father or owner of the slave might recover it. If a slave won money, there might be an action for it against the master; but the demand against the master could not exceed the amount of the slave's peculium, that is, the property which the slave held as his own, according to Roman

custom, with the permission of his master. The praetor's edict also allowed an action against parents and patrons in respect of money lost (to children or the patrons' freed men, as we must understand it). Justinian made several constitutions against gaming. A man who lost money at gaming was not bound to pay it; and if he did pay, it could be recovered by him or his successors (in the Roman sense) from the winner or his heredes any time within thirty years. If they did not choose to recover it, the father or defender (defensor) of the town in which the money was lost might recover it, or any other person might. The money, when recovered, was laid out for public purposes. Gamblers were also liable to a fine. Spiritual persons who violated the gaming laws, or were present at gambling, were suspended for three years and confined in a monastery (*Novell.* 123, c. 10).

The following abstracts of the laws relating to gaming in different countries were prepared by J. M. Ludlow, Esq., and were laid before the Select Committee of the House of Commons on gaming, by H. Bellenden Ker, Esq.:—

By the French law, as it stood before the Revolution, minors alone could recover their losses at play; but no winnings could be sued for except in the case of warlike sports; when not excessive, games of strength and skill were permitted, games of mere chance absolutely forbidden.

The Code Français allows an action for monies won at games of strength and skill, when the amount is not excessive; but monies paid can never be recovered, unless on the ground of fraud. The keepers of gaming-houses, their managers or agents, are punishable with fine (100 to 6000 francs) and imprisonment (two to six months), and may be deprived of most of their civil rights. A trifling fine is imposed on those who set up lotteries, or games of chance in public places; the furniture, implements, &c. are in all cases to be seized.

By the Prussian Code all games of chance, except when licensed by the state, are prohibited. Gaming debts are not the subject of action; but monies paid cannot be sued for by the loser. Wagers give a right of action when the stakes are constituted in cash in the hands of a third person; they are void when the winner had a knowledge of the event, and concealed it. Monies lent for gambling or betting purposes, or to pay gambling or betting debts, cannot be sued for. Gaming-house keepers are punishable with fine, professed gamblers with banishment; and if they break the ban, by imprisonment. Occasional cheating at play obliges to compensation; professed swindlers at play are punishable as for theft, and banished afterwards. Monies won from a drunken man, if to a considerable amount, must be returned, and a fine paid of equal value.

In Austria no right of action is given either to winner or loser. All games of chance are prohibited, except when licensed by the state. Cheating at play is punishable with imprisonment, according to the amount of fraudulent gain. Playing at unlawful games, or allowing such to take place in one's house, subjects the party to a heavy fine, or in default to imprisonment.

The provisions of the Sardinian civil code are similar to those of the French, giving an action for monies won at games of strength or skill, when not excessive in amount; but not allowing the recovery of monies lost, except on the ground of fraud or minority (a provision taken from the old French law).

The Bavarian code is somewhat special in its provisions; it distinguishes between games of pure skill, and mixed skill and chance on the one hand, and games of mere chance on the other. In the two former, monies honestly won, and not excessive in amount, may be lawfully claimed, and monies lost cannot be recovered; but with respect to fraudulent or excessive gaming, and also as to all games of mere chance, the winner may be called upon to repay his gains, and is liable, together with the loser (except as to the latter, in the case of fraud), to a penalty of varying amount. Gaming-house keepers and professed gamblers are subjected to various penalties. Distinctions are also taken as to wagers, which are only void for fraud or immorality, but the amount of which is liable to be re-

duced, if excessive. When monies lost at play are proved to have been the property of some other person than the player, the true owner may recover them.

Wagers also appear to be lawful in Spain, when not in themselves fraudulent, or relating to anything unlawful or immoral. (Johnson's *Institutes of the Civil Law of Spain*, p. 242.)

GAOL DELIVERY. The commission of gaol delivery is directed to the justices of assize of each circuit, the serjeants and king's counsel attending that circuit, the clerk of the assize, and the judges associate. It is a patent in the nature of a letter from the king, constituting them his justices, and commanding them, four, three, or two of them, of which number there must be one at least of the judges and serjeants specified, and authorising them to deliver his gaol at a particular town of the prisoners in it; it also informs them that the sheriff is commanded to bring the prisoners and their attachments before them at a day to be named by the commissioners themselves. Under this commission the judges may proceed upon any indictment of felony or trespass found before other justices against any person in the prison mentioned in their commission and not determined, in which respect their authority differs from that of justices of oyer and terminer, who can proceed only upon indictments found before themselves. (2 Hale, *P. C.*) [ASSIZE.]

Antiently it was the course to issue special writs of gaol delivery for each prisoner, but this being found inconvenient and oppressive, a general commission has long been established in their stead. (4 Bl. *Com.*; Hawk, *P. C.*)

GARDEN ALLOTMENTS. [ALLOTMENTS.]

GARTER, ORDER OF THE, one of the most ancient and illustrious of the military orders of knighthood in Europe, was founded by King Edward III. The precise year of its institution has been disputed, though all authorities agree that it was established at Windsor after the celebration of a tournament. Walsingham and Fabyan give 1344 as its date; Stowe, who, according to Ashmole, is corroborated by the statutes of the Order, says 1350. The precise cause of the origin or formation of the Order is likewise not distinctly known. The common story respecting the fall of the Countess of Salisbury's garter at a ball, which was picked up by the king, and his retort to those who smiled at the action, "*Honi soit qui mal y pense*," which afterwards became the motto of the Order, is not entirely given up as fable. A tradition certainly obtained as far back as the time of Henry VI. that this Order received its origin from the fair sex. Ashmole's opinion was, that the Garter was selected at once as a symbol of union and a compliment to the ladies.

This Order was founded in honour of the Holy Trinity, the Virgin Mary, St. George, and St. Edward the Confessor. St. George, who had become the tutelary saint of England, was considered as its especial patron and protector. It was originally composed of twenty-five knights, and the sovereign (who nominates the other knights), twenty-six in all. This number received no alteration till the reign of George III., when it was directed that princes of the royal family and illustrious foreigners on whom the honour might be conferred should not be included. The number of these extra knights was fifteen in 1845. The military knights of Windsor are also considered as an adjunct of the Order of the Garter.

The officers of the Order are a prelate, who is always the Bishop of Winchester; a chancellor, who till 1837 was the Bishop of Salisbury, but is now the Bishop of Oxford, in consequence of Berkshire, and of course Windsor, being transferred to that diocese; a registrar, who is the Dean of Windsor; garter principal king-at-arms of the Order; and a gentleman usher of the black rod. The chapter ought to meet every year on St. George's Day (April 23rd), in St. George's Chapel, Windsor, where the installations of the Order are held, and in which the banners of the several knights are suspended.

The original dress of the Knights of the Garter was a mantle, tunic, and capuchin or hood, of the fashion of the time, all of blue cloth; those of the knights com-

panions differing only from the sovereign's by the tunic being lined with miniver instead of ermine. All the three garments were embroidered with garters of blue and gold, the mantle having one larger than all the rest on the left shoulder. The dress underwent various changes. Henry VIII. remodelled both it and the statutes of the Order, and gave the knights the collar, and the greater and lesser George, as at present worn. The last alteration in the dress took place in the reign of Charles II.: the principal parts of it consist of a mantle of dark blue velvet, with a hood of crimson velvet; a cap or hat with an ostrich and heron plume; the stockings are of white silk, and the garter, which is of dark blue velvet, having the motto embroidered in gold letters, is worn under the left knee. The badge is a gold medallion representing St. George and the Dragon, which is worn suspended by a blue ribbon; hence it is a form of speech to say, when an individual has been appointed a Knight of the Garter, that he has received the blue ribbon. There is also a star worn on the left breast. The fashion of wearing the blue ribbon suspended from the left shoulder was adopted in the latter part of the reign of Charles II.

From the institution of the Order of the Garter to at least as late as the reign of Edward IV., ladies were admitted to a participation in the honours of the fraternity. The queen, some of the knights-companions' wives, and other great ladies, had robes and hoods of the gift of the sovereign, the former garnished with little embroidered garters. The ensign of the garter was also delivered to them, and they were expressly termed *Dames de la fraternité de St. George*. The splendid appearance of Queen Philippa at the first grand feast of the Order is noticed by Froissart. Two monuments also are still existing which bear figures of ladies wearing the garter; the Duchess of Suffolk's, at Ewelme, in Oxfordshire, of the time of Henry VI., represents her wearing it on the wrist, in the manner of a bracelet; Lady Harcourt, at Stanton Harcourt, in Oxfordshire, of the time of Edward IV., wears the garter on her left arm.

When Queen Anne attended the thanksgiving at St. Paul's in 1702, and again in 1704, she wore the garter set with diamonds, as head of the Order, tied round her left arm. Queen Victoria wears the blue ribbon suspended from the shoulder.

The fees which are payable upon the installation of a Knight of the Garter amount to a considerable sum. If the honour is conferred on any foreign prince or other distinguished foreigner, these fees are commonly, if not invariably, charged upon the civil contingencies, and are consequently paid by the public. When the King of Prussia was installed, in 1842, the following were the fees paid by the public:—

	£
To the Register of the Order .	40
the Dean and Canons of Windsor	20
the Military Knights of Windsor	20
Garter King of Arms, in lieu of the upper garment . .	60
the Usher of the Black Rod .	20
Garter King of Arms, his installation fee	30
the Officers at Arms . .	30
the Church of Windsor, for the offering	11
the Choir of Windsor . .	16
Accustomed charges for the Royal Banner, Garter Plate, Helmet, Sword, and other achievements for his Majesty, with extra embroidery, ornaments, and decorations, with a variety of contingent expenses . . .	138
Fees to the Secretary of the Chancellor of the Order, on warrants for Robes and Jewels, and on the Patent for Dispensation .	21
Extra ingrossing and emblazoning and otherwise ornamenting the Patent of Dispensation transmitted to his Majesty the King of Prussia, printing additions to the Statutes of the Order, &c.	22
Expenses to Windsor on putting up Achievements, &c. . .	10
	£439

GAVELKIND, a customary tenure existing at this day in the county of

Kent only. It seems that this tenure was the common socage tenure among the Anglo-Saxons (Glanvil, l. 7, c. 3), and the reason of its continuance in Kent has been ascribed to the resistance which the inhabitants of the county made to the Norman invaders. This tenure also prevailed in Wales until the 34th Henry VIII., when it was abolished by statute. Various derivations of the term Gavelkind have been suggested: that adopted by Sir Edward Coke and his contemporaries was, *gave all kinde*, from the consequences of the tenure—an etymology worthy of Coke. But that generally received at the present day is from the Saxon *Gavel* (Rent); Gavelkind, that is, land of such a kind as to yield rent. A very elaborate examination of the several proposed derivations is given in the 1st chapter of Robinson's 'Treatise on Gavelkind.' The chief distinguishing properties of this tenure are: "That upon the death of the owner without a will the land descends to all the sons in equal shares, and the issue of a deceased son, whether male or female, inherit his part; in default of sons, the land descends in equal shares to the daughters; in default of lineal heirs, the land goes to the brothers of the last holder; and in default of brothers, to their respective issue."

The tenant may aliene at 15 years of age, by means of a feoffment, and the estate does not escheat in case of an attainder and execution, the maxim being, "the father to the bough, the son to the plough." The husband is tenant by curtesy of a moiety of his wife's lands, without having any issue by her; but if he marries again, not having issue, he forfeits his curtesy. A wife is endowed of a moiety of the lands of which her husband died seised, not for life as by the common law, but during chaste widowhood only. Gavelkind lands were generally devisable by will before the statute of wills was passed.

Several statutes have been passed, at the request of holders of Gavelkind lands, to render them descendible according to the course of the common law, or, as it is called, to disgavel them. These statutes however only alter the partible quality of the customary descent; they do not affect the other incidents to the tenure. And notwithstanding the extent of the disgavelling statutes, it is always presumed that lands in Kent are of this tenure until the contrary is proved. The names of all the persons whose lands in Kent have been disgavelled may be found in Robinson's *Treatise*, before mentioned, p. 381. This was one of the tenures proposed to be abolished or modified by the Real Property Commissioners in their third Report. (2 Blackstone, *Com.*; Robinson's *Gavelkind.*)

This tenure existed also in Ireland as an incident to the custom of tanistry—and as such ceased with that custom in consequence of the judgment against it. (Davis's *Reports*, 28.) In the reign of Queen Anne, with the view of weakening the Roman Catholic interest in Ireland, the land of Roman Catholics was made descendible according to the custom of Gavelkind, unless the heir conformed within a limited time; but by the stat. 17 and 18 Geo. III., c. 49 (Irish), the lands of Catholics are made descendible according to the course of the common law. (Robinson, p. 21.)

This customary descent is followed in some manors, particularly in the manors of Stepney and Hackney. (See the custumal of these manors printed in 2 Watkins, *Copyh.*, 508.)

GAZETTE. [NEWSPAPER.]

GENDARMERIE (from *Gens d'Armes*, men-at-arms) was a chosen corps of cavalry under the old monarchy of France: it is mentioned with praise in the wars of Louis XIII. and Louis XIV. Under the present system the gendarmerie is a body of soldiers entrusted with the police all over France; it furnishes patrols, arrests criminals, examines the passports of travellers, and contributes to the maintenance of good order. Gendarmes are generally stationed at the barriers or gates of the towns, at the principal inns on the roads, at markets and fairs, and along the lines of the frontiers. They are divided into foot and horse: *gendarmes à pied, gendarmes à cheval.* They form a distinct corps in the army, under their own superior officers, who are under the orders of the

ministers of the interior and of police; but in case of war, they may be called into active service like the other corps of the army. The gendarmerie is mostly recruited from old and deserving soldiers of other regiments, who consider it as a promotion, as they have better pay and enjoy greater liberty. This explains why the gendarmes, generally speaking, are remarkably well behaved and trusty men, who, while strictly executing their duties, behave with considerable civility towards unoffending people, such as travellers, and especially foreigners. The same description of troops exists in the Italian states, where they are called Carabineers.

GENEALOGY. [CONSANGUINITY; DESCENT.]

GENERAL, a title conferred on military men above the rank of field-officers. In all the states of Europe it indicates the commander-in-chief of the forces of the nation; the commander of an army or grand division, and also those who, under the latter, exercise his functions, with the particular designations of lieutenant-general and major-general.

The origin of the title appears in the history of France, in which country it seems to have been conferred on the commander of the royal army about the middle of the fifteenth century, when something like a regular military force was first established in Europe. The kings were then considered as holding the chief command of the army in virtue of their birth; and, on appointing persons under them to exercise a general superintendence of the forces, they gave to such officers the title of *lieutenant-general*, in order to designate at the same time the extent of their duties and their dependence on the sovereign whom they represented. By a decree made in the year 1450, in the reign of Charles VII., John, count of Dunois, was so qualified; and the title of lieutenant-general, denoting the immediate commander-in-chief of an army, was long retained in the French service. In the course of time, by an abbreviation in language, the prefix of the title was omitted, and the term *general* alone was applied to persons holding such command.

Previously to the epoch above mentioned the title of Grand Sénéchal of France appears to have conferred the right of commanding the royal armies; but the dignity being hereditary in the counts of Anjou, when that province passed to the crown of England in the reign of Henry II., the right ceased, and the kings of France delegated their authority to noblemen chosen at pleasure. In 1218 Philip Augustus conferred the command on Mathieu de Montmorenci, the constable of France; and the successors of that high officer held it till the reformation of the army in the reign of Charles VII.

It must be remarked, however, that at a period more early than that of the creation of lieutenant-generals under the sovereign, the title of captain-general had been conferred on certain officers with military jurisdiction over particular districts. This species of command is supposed to have been first instituted in 1349 by Philip of Valois, who placed Guy de Nêle, already Maréchal de France, over the district of Xaintonge; within which he was authorised to inspect the castles and fortified towns, and to superintend all the military affairs. The nature of the duty therefore seems to have resembled that of the inspecting field-officers now appointed to particular divisions of this country and the colonies. But in 1635, that is, about eight years after the suppression of the post of constable of France, Louis XIII. gave the title of captain-general, for the army of Italy, to the Duke of Savoy; and this appointment was precisely that of commander-in-chief, since it placed the duke above the Maréchal de Créqui, who was previously at the head of the army.

It is about this time that the term lieutenant-general, in the sense which it now bears, first appears. For, according to Père Daniel, who quotes the history of Cardinal Richelieu for the fact, when the Prince of Condé was made commander-in-chief of the army destined against Spain, the Marquis de la Force was appointed his *lieutenant-general*, and M. de Feuquières held the same rank under the Duc de Longueville, who was to act with an army in Franche-Compté. We have

here but one lieutenant-general for each army: but the writer above mentioned observes that, during the reign of Louis XIV., the armies of France being much more numerous than before, the officers were also greatly multiplied; and adds that, in 1704, there were more than sixty who had the title of lieutenant-general.

The title of captain-general above mentioned must not be confounded with that which was created by Cardinal Richelieu, in 1656, in favour of the Marquis de Castelnaut: this officer was placed above the lieutenant-generals of the army, but was subordinate to the marshal of France, who commanded in chief; and it appears that some of the former having retired from the service in disgust, in consequence of the new appointment, the cardinal was obliged to create others in their places.

In the reign of Francis I. the title of colonel-general was instituted; and it was first in 1544 conferred on M. de Taix, with the command of all the infantry of the nation. The title existed however only to the time of Louis XIV., by whom it was abolished.

The English nation has nearly followed the practice of France in matters appertaining to the military service. Thus the lord-high-constable and the lord-marshal of England, in former times, were at the head of the military establishments of the country; and, when the first office was suppressed by Henry VIII. in 1521, the title of captain-general appears to have been adopted for the commander-in-chief. This title occurs in the list of the army which served at St. Quintin in 1557, of which list a copy is given by Grose from a MS. in the British Museum. From the same list it appears that a lieutenant-general for the whole army was immediately subordinate to the former; and that under the last was a general of horse, a captain-general of foot, with his lieutenant, and a serjeant-major (corresponding to a present major-general). But the title of captain-general probably did not long remain in use; for, in the list of the army raised by Elizabeth in 1588, the highest officer is styled lieutenant-general, the queen herself being probably considered as the commander-in-chief. In the army which, in 1620, it was proposed to raise for the recovery of the Palatinate, and in that raised by Charles I. in 1639, the commander is entitled the lord-general; a lieutenant-general appears as the second in command, and the third is designated as serjeant-major-general. It was probably soon after this time that the last officer was called simply major-general; for we find that in 1656 Cromwell appointed twelve officers under that title to have civil and military jurisdiction over the counties of England. (Clarendon, b. 15.)

It is evident, from the histories of the northern states, that the armies in that part of Europe have always been commanded nearly in the same manner as those of France and England. Sir James Turner, who wrote his 'Military Essayes' in 1670, states that in Germany, Denmark, and Sweden, the commander-in-chief was designated field-marshal, and that he had under him lieutenant-generals of the whole army, besides generals and major-generals of horse and foot. With respect to the first title, he considers it to have been granted, as a more honourable distinction than that of lieutenant-general, only within about fifty years from his time; and he appears to ascribe the introduction of it to the king of Sweden (Gustavus Adolphus), who, when he invaded Poland, thought fit to gratify some of his generals by designating them lieutenant-field-marshals. (*Pallas Armata*, ch. 13.) From that time, both in Germany and Great Britain, such title, omitting the word lieutenant, has been considered the highest in the army.

In France, during the reign of Louis XIV., and perhaps at an earlier time, the naval commander immediately below the rank of vice-admiral was entitled lieutenant-general. A similar designation seems to have been early employed in the English service, for in the time of Queen Elizabeth the commander of a squadron was called the *general*; and, as late as the time of the Commonwealth, a joint commission of admiral and general was given to Blake and Montague, though the expedition on which the fleet

was sent was confined to an object purely naval.

The administration of military affairs in the great nations of Europe becoming highly complicated during the eighteenth century, the commanders-in-chief, even when not actually on the field of battle, found themselves fully occupied with the higher departments of the service; and it became indispensable that the number of subordinate generals should be increased, in order that all the steps which were to be taken for the immediate security of the armies, and for the acquisition of the necessary supplies, might be duly superintended by responsible officers. The division of an army, for the purpose of occupying important positions or of obtaining subsistence, led also to the appointment of several distinct commanders, each of whom required his own particular staff; and this circumstance, added to the necessity of having a number of officers prepared at once to assume the command of troops when circumstances should require it, will explain why military men holding the rank of general appear now to be so numerous.

In the British service in 1845 there are 88 full generals, 131 lieutenant-generals, and 147 major-generals; but of this number many command particular regiments as colonels, or hold military governments in the country and colonies; some of them have only local rank; and 20 have retired from the service, retaining the title, but without receiving the pay or being qualified for obtaining any progressive promotion.

The military *staff* of Great Britain at head-quarters consists of the commander-in-chief, the adjutant-general, and the quartermaster-general. The charge of this staff is provided for in the estimates for Public Departments, and amounted in 1845 to 14,640*l.* The field-marshal the commander-in-chief receives 5999*l.* 13*s.* 9*d.* a year, and has an allowance of 720*l.* for forage. The military secretary has 2000*l.* a year, and 146*l.* for forage, and the four aides-de-camp of the commander-in-chief have an allowance of 9*s.* 6*d.* a day each, and 88*l.* a year each for forage. The annual cost of the adjutant-general's office is 3242*l.* which includes the pay of a deputy adjutant-general, an assistant adjutant-general, and a deputy assistant. The charge of the quartermaster-general's office is 2705*l.* a-year, which includes his own pay and that of the assistant and deputy quartermasters-general. Besides the staff at head-quarters there is a general staff which consists of the generals commanding districts and their aides-de-camp in Great Britain and Ireland, the aides-de-camp to the queen, &c.: the charge of this department in 1845 was 44,504*l.* in pay, and 25,000*l.* for contingencies. There is also the military staff of the colonies, which in the same year cost 88,720*l.* of which 33,000*l.* was for contingencies and 55,726*l.* for pay. The total of the contingencies and pay of the home and foreign staff amounted to 158,230*l.*

The duty of the adjutant-general falls partly under that of the serjeant-major-general in the sixteenth century: in the field he receives the orders from the general officer of the day, and communicates them to the generals of brigades; he makes a daily report of the situations of all the posts placed for the security of the army; and, in a siege, he inspects the guards of the trenches.

The quartermaster-general corresponds in part to the harbinger of the army in the sixteenth century. This officer has the charge of reconnoitring the country previously to any change being made in the position of the army; he reports concerning the ground which may be favourable for the site of a new encampment, and upon the practicability of the roads in the direction of the intended lines of route. He also superintends the formation of the encampment and the disposition of the troops in their cantonments.

The first notice of a commander of the artillery occurs in the time of Richard III.: this officer was designated simply master of the ordnance till 1603, when the Earl of Devon was dignified with the title of general. The head of this department is now styled master-general of the ordnance.

GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND. This is the Scottish ecclesiastical parliament; it is a representative, legislative, and judi-

cial body, which differs essentially in its constitution from the Convocation of the English church [CONVOCATION], in being composed of representatives of the laity, as well as of the clergy; and, therefore (like the British House of Commons), may be considered as a delegation from its constituency, the church. The following is the composition of the General Assembly:—

Eighty presbyteries, each of which consists of a certain number of parishes, varying from six to thirty-six, send to the Assembly 218 ministers and 94 elders; the city of Edinburgh sends 2 elders, and 65 other royal burghs send each one elder; the four universities send each a representative, and an additional one is sent from Marischall college, Aberdeen—these five may be either ministers or elders; one minister and one elder represent the churches in India in connexion with the church of Scotland. The kirk of Scotland has 1023 parishes, with 1050 ministers.

The General Assembly meets annually, in the month of May, in Edinburgh. The session lasts only ten days; but special business not decided within the period of the session may be referred to a commission, which is, in fact, the Assembly under another name; the commission can hold quarterly meetings. The speaker, or president of the assembly, is called moderator; he is chosen annually, and is, in modern times, a clergyman, it being a rule that the moderator should preach a sermon before the opening of the Assembly; but laymen have occasionally filled the chair.

Each parish in Scotland has its kirk session, composed of the minister and lay elders of the parish, which manages the parochial business. From the decision of the kirk session there is an appeal to the presbytery in which the parish lies. Each presbytery is composed of the ministers and elders of a certain number of parishes; but the presbyteries vary considerably in the number of parishes of which they are formed. A higher court, called a synod, is composed of two or more presbyteries. From the decision of a synod an appeal lies to the General Assembly, whose decision is final. The functions of the Assembly are analogous to a combination of the functions of both houses of parliament. Its members speak and vote; it judges all matters connected with the government of the church; and it can proceed judicially against any member of the church, clerical or laical, for alleged impropriety or inconsistency of conduct or doctrine.

The connexion of the Church of Scotland with the State is indicated in the General Assembly by the presence of a functionary, who, under the title of lord-high-commissioner, represents the king. The Scottish church however does not recognise the king as head of the church, but as head of the state, with which the church is allied, for purposes of protection and civil authority. The lord-high-commissioner has no voice in the assembly; business is not necessarily interrupted by his absence; and his presence merely implies the sanction of the civil authority. On the conclusion of the session of the General Assembly, the moderator, after mentioning the day in the following year on which the Assembly meets again, dissolves the meeting in the name of the Lord Jesus Christ, the head of the church (sometimes the words 'the only head' are used), and then the lord-high-commissioner adds the sanction of the civil authority by appointing in the name of the king the Assembly to meet on the day named by the moderator.

GENERALISSIMO, the commander-in-chief of an army which consists of two or more grand divisions under separate commanders. The title is said by Balzac to have been first assumed by Cardinal Richelieu, when he led a French army into Italy, and it has been since occasionally given to officers at the head of armies on the Continent, but it has never been adopted in this country.

GENTLEMAN, a corruption of *gentilhomme*, our Saxon ancestors having very early substituted "mon," or "man," for the corresponding term of the Norman-French, from which they originally received the term. Some form of this word (a compound of *gentilis* and *homo*) is found in all the Romance languages (*gentil-homme* in French, *gentil-uomo* in

Italian, and *gentil-hombre* in Spanish), and it is undoubtedly one of the many traces of the great influence which the laws and polity of Rome have exercised upon modern society and civilization.

In the earliest form of the Roman constitution the populus, or ruling portion of the community, was divided into gentes, which were united by a common name, and the performance of certain sacred rights. Each gens was again subdivided into several familiæ, distinguished by a surname in addition to the common Gentile appellation. Thus the gens Cornelia comprised the families of the Scipiones, the Lentuli, the Sullæ, &c. In default of Agnati, the property of a deceased person reverted, not to the whole populus, but to the gens. [CONSANGUINITY.]

The Gentile privileges were much discussed in the quarrels between the patricians and the plebeians; and the phrase *gentem habere* (Livy x. 8) is often employed as distinctive of the patricians. When the members of the plebs obtained the right of intermarriage with patrician families, and access to the honours of the state, a new order of nobility (nobiles) was formed, which rendered the old distinction between Patrician and Plebeian of less importance. Still the old Patrician families of Rome had a superior rank in public estimation, as being descended from the old nobility. There were both Patrician and Plebeian Gentes at Rome: the origin of the Plebeian Gentes is not capable of being explained historically; but it may have arisen in several ways. In Cicero's time the word Gentilis is defined in a way that suited his period, but would have been too comprehensive in the earliest periods of the Roman states. Gentiles, according to Cicero (*Top.* 6), denote those who had the same name, whose ancestors had always been free, who were not capite diminuti, or had lost none of their civil rights. Hence also, in an opposite sense, "*sine gente*" is employed by Horace (*Sat.* ii. v. 15) and Suetonius (*Tib.* 1) for ignobly born and of servile parentage.

The privilege of succession, which was called *jus gentilitatis*, or simply *gentilitas* (Cic., *De Oratore*, i. 38), and formed one of the enactments of the Twelve Tables, was gradually undermined by the encroachments of the praetors on the civil law, and finally disappeared (Gaius, iii. 25); but the name of gentle (gentile) man, has survived in all the languages of Western Europe, which are derived from the Latin or have received large additions from it.

According to Selden (*Titles of Honour*, p. 852), "a gentleman is one that either, from the blood of his ancestors, or the favour of his soveraigne, or of those that have the vertue of soveraignte in them, or from his own vertue, employment, or otherwise, according to the customes of honour in his countrie, is ennobled, made gentile, or so raised to an eminencie above the multitude, that by those lawes and customes he be truly nobilis, or noble, whether he have any title, or not, fixed besides on him." That the word was formerly employed in this extensive signification is clear, from a patent of Richard II., by which one John de Kingston is received into the estate of a gentleman and created an esquire ("Nous lui avons resceivez en l'estate de gentilhome et lui fait esquier"); and from another of Henry VI., who there, by the term "nobilitamus," creates one Bernard Angevin, a Bourdelois, a gentleman. And, according to Smith (*De Rep. Ang.*, lib. i. c. 20, 21), under the denomination of gentleman are comprised all above yeomen, whereby noblemen are truly called gentlemen.

In a narrower sense a gentleman is generally defined to be "one who, without any title, bears a coat of arms, or whose ancestors have been freemen; and by the coat that a gentleman giveth, he is known to be, or not, descended from those of his name that lived many hundred years since." (Jacobs' *Law Dictionary.*) There is also said to be a gentleman by office and in reputation, as well as those that are born such (2 *Inst.* 668); and according to Blackstone, quoting Sir Thomas Smith (1 *Comm.*, p. 406), "Whosoever studieth the laws of the realm, who studieth in the universities, who professeth the liberal sciences, and (to be short) who can live idly and without manual labour, and well bear the port, charge and countenance of a gentle-

man, he shall be called master, and taken for a gentleman."

The author of the Commentaries must have been somewhat puzzled with his definition of a gentleman, as understood in his time. Having defined a gentleman to be one who studieth the laws, &c., he adds (to be short), that he who can live idly and bear the port, &c. of a gentleman, is a gentleman; that is, if he can live idly, and if he can also do as a gentleman does (it not being said what this is), he is a gentleman. Perhaps a definition of the term, as now used, could not be easily made; it being extended by the courtesy of modern manners to many who do not come within the ancient acceptation of the term, and denied by public opinion to many whose rank and wealth do not make up for the want of other qualifications.

GERMANIC CONFEDERATION. The constitution of the old German Empire is noticed under GERMANIC EMPIRE. After the first French Revolution, most of the States of Germany were joined in a Confederation under the protection of Napoleon. [CONFEDERATION OF THE RHINE.] The reverses of Napoleon put an end to the Confederation of the Rhine, and in its place the Germanic Confederation, which still exists, was constituted by an act of the Congress of Vienna, dated 8th of June, 1815. It consists of thirty eight Independent States. The central point and organ of the Confederation is the Federative Diet, which sits at Frankfort on the Main. Its sessions were opened on the 5th of November, 1816. It exercises its authority in a double form: 1, as a general assembly, called Plenum; and 2, as a minor council, or the Federative government. The Plenum meets only whenever an organic change is to be introduced, or any affair relating to all the Confederation is to be decided. The Plenum contains seventy votes, of which Austria and the five German kingdoms, Prussia, Hanover, Saxony, Bavaria, Wirtemberg, have each four votes, and the other states, in proportion to their importance, three, two, or one vote each. The Federative government is composed of seventeen votes, out of which eleven principal states have each a single vote, and the remaining twenty-seven only six joint votes. Austria presides in both the assemblies, and decides in case of equality. The Federative government has the initiative, and deliberates on the projects which are presented to the Plenum, where they are not debated, but simply decided by a majority of ayes or noes. It executes the enactments of the Plenum, and despatches the current business of the Confederation. It decides by a simple majority, and seven votes form a quorum. The meetings of the Federative diet are either those wherein preparatory debates take place, but no protocols are made, or those wherein affairs are finally decided.

The object of the Germanic Confederation and the duties of the Federative Diet are—the maintenance of external security or mutual defence from a common enemy, and the preservation of internal peace among the Federative states, which must not declare war on each other, but must submit their differences to the decision of the diet. The maintenance of internal security comprehends not only the prevention of conflicts among the Federative states, but also the suppression of any attempt by the subjects of any of the states to subvert the existing order of things. It was in consequence of this principle that the central commission of inquiry into revolutionary measures was established at Mainz in 1819-20. A further development of the same principle, occasioned by the revival of liberal opinions throughout Germany by the French Revolution of July, was made on the 28th June, 1832, by the proclamation of the following articles, particularly directed against the constitutional states of Germany:—1st. The German princes are not only authorised but even obliged to reject all propositions of the states which are contrary to the fundamental principle, that all sovereign power emanates from the prince, and that he is limited by the assent of the states only in the exercise of certain rights. 2. The stoppage of supplies by the states, in order to obtain the adoption of their propositions, is to be considered as sedition against which the Confederation may act. 3. The legislation of the federative states

must never be in contradiction either to the object of the Federation or to the fulfilment of federal duties; and such laws (as for instance, the law of Baden, which established the liberty of the press) may be abolished by the diet. 4. A permanent commission of federal deputies shall watch over the legislative assemblies of the federal states, in order that nothing contrary to the federal act may occur. 5. The deputies of the legislative assemblies of the federal states must be kept by the regulations of their governments within such limits that the public peace shall not be disturbed by any attacks upon the Confederation. 6. The interpretation of the federal laws belongs exclusively to the federal diet. On the 5th July, 1833, the federal diet proclaimed a new law consisting of the following 10 articles: 1. All German works containing less than 20 sheets which appear in foreign countries cannot be circulated in the federal states without the authorisation of the several governments.* 2. Every association having a political object is prohibited. 3. Political meetings and public solemnities, except such as have been established for a long time and are authorised, cannot be held without the permission of the several governments. 4. All sorts of colours, badges, &c. denoting a party are proscribed. 5. The regulations for the surveillance of the universities, proclaimed in 1819, are renewed and rendered more severe. By the remaining 5 articles the federative states pledged themselves to exercise a vigilant watch over their respective subjects, as well as over foreigners residing in their states, in respect of revolutionary attempts; to surrender mutually all those individuals who had been guilty of political offences, with the exception of their own subjects, who are to be punished in their own country; to give mutually military assistance, in case of disturbance, and to notify to the diet all measures adopted with reference to the above-mentioned objects.

On the 30th October, 1834, the meeting of the Federative diet unanimously agreed to the proposition of Austria, to establish a tribunal of arbitration in order to decide differences which might break out in any state of the Confederation between the government and the chambers respecting the interpretation of the constitution, or the encroachments on the rights of the prince by the chambers, or their refusal of subsidies. This tribunal consists of thirty-four arbitrators nominated by the seventeen members of the minor council, each member nominating two arbitrators. [FEDERATION.]

GERMANIC EMPIRE. The modern history of Germany commences in the ninth century, when Louis le Debonnair, the grandson of Charlemagne, became, by the treaty of Verdun, A.D. 843, the first king of the Germans. After A.D. 918, the crown became elective. The emperors of Germany assumed the title of Roman emperors from the time of Otho I., who died A.D. 973: when a successor to the throne was elected during the emperor's lifetime, he was called the king of Rome. On the 6th of August, 1806, when the German States had most of them fallen under the power of Napoleon, the emperor, Francis II., abdicated the imperial crown of Germany, declared the dissolution of the Germanic empire, and took instead the title of emperor of Austria. The Confederation of the Rhine had been formed by the policy of Napoleon, July 12th, 1806. [CONFEDERATION OF THE RHINE.]

Before the first French revolution the states of the Germanic empire consisted of the following members, divided into three colleges, or chambers:—

I. The Electoral College, which consisted of the Ecclesiastical Electors.

1. The archbishop of Mainz, arch-chancellor of the empire for Germany. 2. Archbishop of Treves, arch-chancellor of the empire for Gallia and the kingdom of Arles (a purely titular office). 3. Archbishop of Cologne, arch-chancellor for Italy (also a titular office).

II. The Secular Electors were—

4. The king of Bohemia, arch-cup-

* In 1836 the diet prohibited editors of newspapers and political writers from publishing accounts of the debates of the representative bodies, except they had previously appeared in the official papers of the respective governments. [PRESS, LIBERTY OF.]

bearer of the empire: he presented the emperor at the coronation banquet with a cup of wine and water. 5. The elector of Bavaria, arch-carver of the empire: he bore at the coronation-procession the golden bull before the emperor, and presented to him the dishes at the banquet. 6. The elector of Saxony, arch-marshal of the empire: he bore in the great solemnities of the empire the sword of state, and at the coronation preceded the emperor on horseback. 7. The elector of Brandenburg, arch-chamberlain of the empire: he bore in the coronation-procession the sceptre, and presented to the emperor a basin with water to wash his hands. 8. The elector palatine of the Rhine had the title of the arch-treasurer of the empire: his duties were to scatter at the coronation gold and silver medals, struck for the occasion, amongst the people. This electorate became united with that of Bavaria by the accession of the elector to the throne of the last-named principality in 1777, after the extinction of the reigning house of Bavaria. 9. The elector of Brunswick-Lüneburg, or Hanover, created by the Emperor Leopold I. in 1692, received in 1706 the title of arch-treasurer; when the emperor, having put to the ban of the empire the elector of Bavaria, took from him the office of the arch-carver, and bestowed it on the elector palatine of the Rhine, whose office on that occasion was given to Hanover.

The Second College consisted of the princes of the empire, who were in rank next to the electors: they had each a vote in the diet of the empire, and were divided into Spiritual and Temporal princes.

The Spiritual princes of the empire who had a vote in the diet were:—the archbishop of Salzburg, and formerly the archbishop of Besançon; the grand-master of the German order; the bishops of Bamberg, Würzburg, Worms, Eichstaedt, Speyer, Strassburg, Constanz, Augsburg, Hildesheim, Paderborn, Freysingen, Passau, Ratisbon, Trent, Brixen, Basel, Münster, Osnabrück, Liège, Chur, Fulda, Lübeck; the princely (gefürstete) abbot of Kempten; the princely prebendaries of Berchtolsgaden and Weissenburg; the princely abbots of Prüm, Starblo, and Cervey.

The Temporal princes were:—the archduke of Austria; the dukes of Burgundy, and Magdeburg; the counts palatine of Lautern, Simmern, and Neuburg; of Deuxponts (Zweibrücken), of Veldenz, and Lautereken; the dukes of Bremen, of Saxen-Weymar, Eisenach-Gotha, Altenburg, Coburg; the margraves of Brandenburg-Culmbach, and of Brandenburg-Onolzbach; the dukes of Brunswick, Zell, Grubenhagen, Calenberg, and Wolfenbüttel; the prince of Halberstadt; the dukes of Upper and Lower Pomerania; of Verden, Mecklenburg-Schwerin, Mecklburg-Gustrow (afterwards Strelitz); of Wirtemberg; the landgraves of Hessen-Cassel and Hessen-Darmstadt; the margraves of Baden-Baden, Baden-Durlach, and Baden-Hochberg; the dukes of Holstein, Gottorp, of Saxe-Lauenburg; the prince of Minden; the landgrave of Leuchtenberg; the prince of Anhalt; the princely count of Henneberg; the princes of Schwerin, Kamin Ratzeburg, and Hersfeldt; the princely count of Montbeliard. The princes enumerated belonged to the old body; the following who were elevated to their dignities after the time of the Emperor Ferdinand II., were called the new: the duke of Aremberg; the princes of Hohenzollern, Salm, Lobkowitz, Dietrichstein, Nassau-Hadamar, Nassau-Dillenburg, Auersberg, East Friesland, Schwarzenberg, Lichtenstein, Thurn-Taxis, and Schwarzburg. Many of these principalities were in the possession of one individual, who had consequently several votes, the votes being attached to the states and not to individuals.

The prelates, abbots, and abbesses of the empire were divided into two benches, the Suabian and the Rhenish, of which each had one vote. The counts and nobles of the empire were divided into four benches; of Suabia, Franconia, Westphalia, and of Wetterau, each having one vote. They belonged to the second college.

The free Imperial cities formed a college at the diet, divided into two benches, the Rhenish with fourteen cities, and the Suabian with thirty-seven. Each town had a vote.

The above-mentioned three colleges

formed the Diet of the empire, whose ordinary meetings were formerly summoned by the emperors twice a-year, in addition to extraordinary meetings. From the year 1663 the Diet sat at Ratisbon. The emperor at first appeared personally at the Diet, but in course of time he sent a delegate, called Principal Commissarius, who was always himself a prince of the empire, and who had an assistant, called Con-commissarius. The elector of Mainz, as arch-chancellor for Germany, or his deputy, presided in the Diet, and every despatch addressed to the Diet was directed to him, and communicated from his chancery to the members of the Diet. The president of the first college was the elector of Mainz; of the second, alternately, the archbishop of Salzburg and the arch-duke of Austria; and of the third, the representative of the town where the Diet was held. Every college voted separately; and when their respective decisions on the subject under discussion agreed, the matter was presented for the ratification of the emperor; after which it became law, and was called *conclusum imperii*. The emperor could refuse his ratification, but could not modify the decisions of the diet.

The Diet enacted, abolished, and interpreted laws; declared war: concluded peace; contracted alliances; and received foreign ambassadors. A declaration of war was decided on an Imperial proposition, by a majority of votes; and when it was decided, even those states that had voted against it were obliged to furnish their contingents. The diet also imposed taxes for the general expenses of the empire.

There were two tribunals for the decision of points in dispute between the members of the empire; the AULIC COUNCIL of the empire, which had its seat always at the residence of the emperor; and the Cameral tribunal of the empire (Cameralgericht), which sat at Wetzlar. They were composed of members delegated by the different states of the empire, and an imperial deputy presided.

The emperor was elected only by the electors, who could do it either personally or by deputies. The place of election was Frankfort on the Main, where the coronation also took place, although the golden bull of Charles IV. declared that the emperor should be elected at Frankfort, and crowned at Aix-la-Chapelle. All strangers, even the princes of the empire and foreign ambassadors, were obliged to leave the town on the day of the election, which took place in a chapel of St. Bartholomew's Church. Mainz was the teller; and after having collected the votes, he gave his own to Saxony. The emperor, immediately after the election, swore to the constitution, or, as it was legally termed, capitulation. He could do it either personally or by deputy.

GILD. [MUNICIPAL CORPORATIONS.]

GLASS. There are five distinct kinds of glass, which differ from each other in regard to some of the ingredients of which they are made, and in the processes of manufacture. These kinds are flint-glass, or crystal; crown-glass, or German sheet-glass; broad-glass, or common window-glass; bottle, or common green glass; and plate-glass. The principal ingredients used for the production of each of these kinds of glass are silex, or flint, and an alkali. The differences in the various kinds result from the description of alkali employed, and from the addition of certain accessary materials, usually metallic oxides.

The time at which glass was invented is very uncertain. The popular opinion upon this subject refers the discovery to accident. It is said (Plin., *Nat. Hist.*, lib. xxxvi. c. 26), "that some mariners, who had a cargo of *nitrum* (salt, or, as some have supposed, soda) on board, having landed on the banks of the river Belus, a small stream at the base of Mount Carmel in Palestine, and finding no stones to rest their pots on, placed under them some masses of nitrum, which, being fused by the heat with the sand of the river, produced a liquid and transparent stream: such was the origin of glass." The antient Egyptians were certainly acquainted with the art of glass-making. This subject is very fully discussed in a memoir by M. Boudet, in the 'Description de l'Egypte,' vol. ix., Antiq. Mémoires. The earthenware beads found in some mummies have an external coat of glass, coloured with a metallic oxide; and among the ruins of Thebes pieces

of blue glass have been discovered. The manufacture of glass was long carried on at Alexandria, from which city the Romans were supplied with that material; but before the time of Pliny the manufacture had been introduced into Italy, France, and Spain (xxxvi. c. 26). Glass utensils have been found among the ruins of Herculaneum.

The application of glass to the glazing of windows is of comparatively modern introduction, at least in northern and western Europe. In A.D. 674 artists were brought to England from abroad to glaze the church windows at Wearmouth in Durham; and even in the year 1567 this mode of lighting dwellings was confined to large establishments, and by no means universal even in them. An entry then made in the minutes of a survey of Alnwick Castle, the residence of the Duke of Northumberland, informs us that the glass casements were taken down during the absence of the family to preserve them from accident. A century after that time the use of window-glass was so small in Scotland that only the upper rooms in the royal palaces were furnished with it, the lower part having wooden shutters to admit or exclude the air.

The earliest manufacture of flint-glass in England was begun in 1557, and the progress made towards perfecting it was so slow, that it was not until near the close of the seventeenth century that this country was independent of foreigners for the supply of the common article of drinking-glasses. In 1673 some plate-glass was made at Lambeth, in works supported by the Duke of Buckingham, but which were soon abandoned. It was exactly one century later that the first establishment of magnitude for the production of plate-glass was formed in this country; and works upon a large scale were erected at Ravenhead, near Prescot in Lancashire, which have been in constant and successful operation from that time to the present day.

At an early period of its history in this country the glass manufacture became an object of taxation, and duties were imposed by the 6 & 7 William and Mary, which acted so injuriously, that in the second year after the act was passed one half of the duties were taken off, and in the following year the whole was repealed. In 1746, when the manufacture had taken firmer root, an excise duty was again imposed, at the rate of one penny per pound on the materials used for making crown, plate, and flint glass, and of one farthing per pound on those used for making bottles. In 1778 these rates were increased 50 per cent. upon crown and bottle glass, and were doubled on flint and plate-glass. These rates were further advanced from time to time in common with the duties upon most other objects of taxation. The precise rates of duty charged upon each kind of glass in 1793, 1806, and 1834 were as under:—

	1793. Per cwt.		1806. Per cwt.		1834. Per cwt.	
	s.	d.	s.	d.	s.	d.
Crown-glass .	16	1¼	36	9	73	6
Plate-glass ..	21	5½	49	0	60	0
Flint-glass...	21	5½	49	0	56	0
Broad-glass..	8	0½	12	3	30	0
Bottle-glass..	4	0¼	4	1	7	0

In 1813 the rates of 1806 were doubled, and with the exception of a modification in 1819 in favour of plate-glass, then reduced to 3*l.* per cwt., were continued at that high rate until 1825. In that year a change was made in the mode of taking the duty on flint-glass, by charging it on the weight of the fluxed materials instead of on the articles when made, a regulation which did not affect the rate of charge. In 1830 the rate on bottles was reduced from 8*s.* 2*d.* to 7*s.* per cwt. In 1835, in consequence of the recommendation contained in the thirteenth Report of the Commissioners of Excise Inquiry, the rate upon flint-glass was reduced from 6*d.* to 2*d.* per pound, a measure which was rendered necessary by the encouragement given under the high duty to the illicit manufacture, which was carried on to such an extent as to oblige several regular manufacturers to relinquish the prosecution of their business. The duties varied from 200 to 300 per cent. on the value of most articles of glassware, and the cost of collecting the duty on flint-glass amounted to 57 per cent.

The number of establishments for the manufacture of glass in the United Kingdom, in 1833, was 126, of which 106

were in England, 10 in Scotland, and 10 in Ireland. In 1841 the number of persons employed in the glass manufacture in Great Britain was 7464.

In 1845 the duty was wholly repealed, a proposal to this effect having been brought forward by Sir Robert Peel in introducing the budget, February 14th. The total abolition of this duty redounds greatly to the credit of the minister. There was no duty which required such a system of perpetual and vexatious interference on the part of the Excise. While the exports of earthenware have been constantly increasing, those of glass have fallen off, for our manufacturers, while subject to be interfered with in their operations, were unable to compete with the manufacturers of Belgium, France, and more particularly those of Bohemia, where the glass manufacture has attained the highest perfection. Foreign glass found its way into our bonded warehouses, and was exported to our own colonies, while the exports of English glass to these colonies were gradually falling off. On proposing the entire abolition of the duty on glass, Sir Robert Peel remarked that it was difficult to foresee to what perfection this beautiful fabric might not be brought when the manufacturers were allowed to exercise their skill without restraint, and it was also impossible to say to what new purposes glass might not be applied in this country. He stated that in France, where the ingenuity of the manufacturer was unfettered, glass pipes for the conveyance of water were beginning to be used, and that they cost 30 per cent. less than iron pipes, and could bear a greater external pressure. Balance-springs for chronometers could be made of glass, and were much superior to any others; but the manufacture was so expensive, and required so much skill, that he doubted whether under the existing system of restriction this valuable improvement could be generally adopted. At the Cambridge meeting of the British Association for the Advancement of Science, in June, 1845, Sir John Herschell adverted to the important improvements which might be anticipated in the manufacture of scientific instruments in which glass forms a part, now that the skill and ingenuity of the manufacturer may be freely developed.

In 1793, when taxation was comparatively low, the quantity of all kinds of glass made and retained for use in the Kingdom was 407,203 cwt., and the amount of revenue obtained from it 177,408*l.* The average rate of duty was therefore 8*s.* 8¼*d.* per cwt. upon the whole quantity. In 1834 the rate of duty was by progressive additions fourfold what it was in 1793, the average being 35*s.* 7¼*d.* per cwt. upon the aggregate quantity used; and although the population had in the meantime increased more than 60 per cent., the quantity of glass which was taken for use was only 374,351 cwt., or one-twelfth less than was so taken in 1793. If the quantity used in proportion to the population had continued the same, that quantity would in 1834 have amounted to 663,740 cwt., and a revenue equal to what was realized would have resulted from an average rate of 20*s.*, instead of 35*s.* 7¼*d.*

The quantity of each description of glass brought to charge by the excise, in 1834 and 1836, was as follows:—

	1834. Cwt.	1836. Cwt.
Crown . .	136,708	163,928
Flint . .	83,323	102,653
Plate . .	18,922	22,169
Broad . .	6,766	7,629
Bottle . .	344,014	448,789

In 1841-42-43 the quantities charged by the excise were as under:—

	1841. Cwt.	1842. Cwt.	1843. Cwt.
Crown . .	116,895	97,495	102,222
Flint . .	97,523	83,652	85,157
Plate . .	27,639	21,528	20,923
Broad . .	20,855	25,500	29,154
Bottle . .	501,194	390,485	336,014
	764,106	618,660	573,470
Duty .	£898,368	767,904	779,800

In 1843 the quantity of glass manufactured in England was 477,693 cwt.; Scotland, 84,898 cwt.; Ireland, 10,897 cwt.

In 1827 the real value of glass-ware exported from the United Kingdom was 534,549*l.* From 1828 to 1832 inclusive, the average annual value was 441,849*l.*

In 1832 the value of glass exported was only 402,757*l.* In the three following years, 1833, 1834, and 1835, the exports increased, and in 1835 amounted to 640,410*l.* The exports from 1838 to 5th of June, 1845, were as under:—

1838 . . .	£377,283
1839 . . .	371,208
1840 . . .	417,178
1841 . . .	421,936
1842 . . .	310,152
1843 . . .	339,918
1844 . . .	388,608
1845, Jan. 5th to June 5th	215,639

The principal countries to which glass was exported from the United Kingdom in 1842 were as follows:—

	£
East India Company's Territories and Ceylon . .	74,211
British West Indies . .	45,539
British North America . .	43,259
British Australia . . .	32,324
Brazil	21,445
Other parts of South America .	11,763
United States of North America	12,220
Cape of Good Hope . .	9,217
Mauritius	7,175
Northern Europe . . .	12,351
Southern Europe . . .	11,613

In 1836 the exports to Northern Europe amounted to 22,210*l.*; to Southern Europe, 15,440*l.*; to British North America, 103,481*l.*; and to the United States of North America, 98,045*l.*; but the exports generally in this year, especially to the United States, were much higher than usual; still, in 1837, the exports of glass to the United States amounted to 63,800*l.*; but recent alterations in their tariff have occasioned an increase in the domestic manufacture. In 1840 there were 81 glass-houses in the United States.

GLEANING. The practice of gleaning in corn-fields what the reapers of the harvest leave behind is vulgarly supposed to be a legal custom which the "owner or occupier of the field has no right to prohibit, and that the poor who enter a field for this purpose are not guilty of trespass;" but the only authority in support of this view is an extra-judicial dictum of Lord Hale. Blackstone, in his 'Commentaries,' book iii. c. 12, remarks that this humane provision seems borrowed from the Mosaical law (*Levit.*, c. xix. v. 9, and c. xxiii. v. 22, &c.), and apparently adopts Lord Hale's opinion. The question has, however, twice been tried in the Court of Common Pleas. In the first case the defendant pleaded that he being a poor, necessitous, and indigent person, entered the plaintiff's close to glean; and in the second the defendant's plea was the same, with the addition that he was an inhabitant legally settled within the parish. Mr. Justice Gould gave a judgment in favour of gleaning; but the other three judges clearly decided that the claim had no foundation in law, and that "it was a practice incompatible with the exclusive enjoyment of property, and was productive of vagrancy and many mischievous consequences." (1 H. Bl., *Rep.* 51, quoted in Christian's ed. Blackst., *Com.*, vol. iii. p. 213.)

The general custom in all parts of England is to allow the poor to glean, in some cases before the harvest is carried, but more generally perhaps not until afterwards. Persons who are not actually necessitous sometimes avail themselves of permission to glean, and by commencing their labours as soon as it is daylight, they gain as much as they would have done from the wages which they would have earned if they had been employed by the farmer to secure the crop. In this case the privilege is abused, and the community not benefited. In some districts the farmers meet together and establish rules for regulating the practice of gleaning, with a view of protecting themselves, and likewise of confining the privileges to the necessitous poor of the neighbourhood. The following are rules which were agreed upon at a meeting of farmers in Hertfordshire, 11th August, 1845:—1, That no person shall be allowed to glean in any field, until the day after the corn shall have been carted and the field cleared; 2, That no person be allowed to enter the fields for the purpose of gleaning until after eight o'clock in the morning, or to remain therein after six o'clock in the evening; 3, That no able-bodied labourer above sixteen years of age and under sixty shall be allowed to glean in any of the fields situated within the parishes [above named]; 4, That any per-

son or persons found breaking the rules laid down in the foregoing resolutions shall be considered a trespasser, and prosecuted accordingly. In some cases the only restriction is as to the hours when gleaning is allowed; and this is a very proper one, as in the absence of any rule gleaners have been known to commence before three o'clock in the morning, that is, before daylight, and while the crop was still in the field.

The following table is from a paper prepared by Dr. Kay Shuttleworth, on the earnings of agricultural labourers in Norfolk and Suffolk (*Journal of Statistical Society of London*, vol. i., p. 183), and it professes to show the value of corn gleaned by 388 families:—

				Average number of Children in a Family.	Average Annual Amount. £	s.	d.
46	families with no children				0	17	10½
110	„	„	all the children under 10	2¼	0	18	7½
97	„	„	one child above 10	3 7/10	1	0	6¼
85	„	„	two children	4 1/10	1	5	6½
37	„	„	three	5¼	1	9	6¼
13	„	„	four	7	1	6	9½

The total value of gleanings of the 338 families was 423*l.* 12*s.*, and the average for each family 1*l.* 1*s.* 10*d.*, which was one-fifth of the average harvest wages of each of the same number of families.

GLEBE LAND. [BENEFICE.]

GLUTS. [DEMAND AND SUPPLY.]

GOODS AND CHATTELS. [CHATTELS.]

GOVERNMENT is a word used in common speech in more than one sense. 1, It denotes the *act of governing*, as when we speak of "the business of government." 2, The *persons who govern* are called "the government;" and we thus speak of "the French government," "the Russian government," &c. 3, The word "government," is used for the phrase *form of government*, as when we speak of "a monarchical, aristocratical, or republican government;" or again of "the English or French government," meaning the English or French form of government, or the English or French constitution.

Of these three meanings of the word "government," the first and the last are the most important. Each of them opens out a large and interesting field of inquiry; and correspondent to each of them is a science.

First, there is the science which (to use the briefest mode of expression possible) relates to the business of government; and secondly, there is that which relates to the formation of government. The first of these two sciences enumerates and classifies the operations of governing; the second, the forms of government; and the end of government being the production of the greatest possible amount of happiness for those who are governed, the first seeks to determine how the operations of governing shall best be carried on, and the second how the government shall best be formed, with reference to the attainment of this end.

The science of government, in the first of the two senses, is more commonly called the science of legislation. So the art which flows from this science, or the art of governing, is called the art of legislation. [LEGISLATION.] In the present article we concern ourselves exclusively with the second of the two sciences, and with that sense of the word "government" in which it stands for the phrase "form of government."

It is hardly necessary to explain the phrase "form of government," though, if it were necessary, many changes of phrase might be resorted to. Thus we might say that the form of government is but another and a shorter phrase for the mode of distributing the powers of government, or ("powers of government" and "sovereignty" being interchangeable expressions) of distributing the sovereignty in a state. And many other changes of phrase, which it is not worth while to enumerate, might be employed. Or we might explain the phrase by enumerating the various items which it comprehends. Thus, not proposing now to make anything like a complete enumera-

tion, we might say that the number of the governors or governing bodies, their relations to one another (if more than one), and the modes in which they are severally appointed, are so many elements of a form of government. But an enumeration of these elements will obviously be contained in an enumeration of the forms of government.

1. A government consists either of one person, or of more than one.

When it consists of one person only, the appropriate name for the form of government would be *monarchy*. But this name is generally given to a particular class of governments of more than one; while a government of one only is called by the names of *absolute monarchy*, *despotism*, and *tyranny*. Of these three names, the last two may be objected to as names, because they always imply disapprobation, or because they are not only names, but also (to employ Mr. Bentham's phraseology) words dyslogistic. But the essence of this form of government is the complete dependence of the governed on the will of one person, which is well expressed by the terms despotism and tyranny; and the sense of disapprobation which hangs about these terms, or their dyslogistic character, is to be traced to the accidental circumstance of the conjugate terms *despotic* and *tyrannical* being commonly used to describe other forms of government, in which the arbitrary conduct of the governors resembles that of the generality of despots or tyrants.

2. A government of more than one may either consist of one homogeneous body, or (changing the phrase) of one body all whose members are appointed in the same way; or it may be mixed, compound, or consist of heterogeneous parts.

When the members of the one governing body, if hereditary, are a decided minority of the state, or, if deriving their powers from without their own body, they so derive them from a portion of the state which is yet a decided minority, the government is called by the names *aristocracy* and *oligarchy*. There is a difference in the use of these two terms which it is impossible to mark exactly. But it may be said roughly that the term oligarchy is used where the minority is very small, and the term aristocracy where it is not. The latter term also would be always employed where the members of the governing body derive their powers from without, or where the body is elective.

When again the members of the one governing body either themselves constitute, or derive their powers from, a portion of the state which is a decided majority, the government is called a *democracy*.

3. Before proceeding any further, we may remark that the forms of government of which we have now spoken, namely, absolute monarchy or despotism, aristocracy, oligarchy, and democracy, are commonly called (as being governments of one person, or of one homogeneous body) pure forms of government, in contradistinction to the mixed forms, which yet remain to be considered. The division of forms of government into pure and mixed is a complete division, which the common division into monarchy, aristocracy, and democracy is not.

4. A mixed form of government is one compounded of the whole or of any two of the three elements which exist separately in the three pure forms of government, and also of individuals or bodies deriving their powers from different portions of the state, even though each of these different portions is a decided majority of the state. It is not necessary to enumerate all the mixed forms of government which arise from all the possible combinations. Besides that all the possible combinations may be easily seen, some of them produce forms of government which have never existed, and which consequently are no objects of interest. It will be sufficient then to speak of those combinations, or rather of those classes of combinations, with which men are familiar, and for which common speech supplies names.

The mixed forms of government which occur may be divided into two classes, according as an hereditary chief does or does not enter into their composition.

Governments which contain an hereditary chief united either with an aristo-

cratic and a democratic body, or with an aristocratic body by itself, or with a democratic body by itself, are generally called *monarchies*. They are also called *limited monarchies*, as if to distinguish them from the governments of one only, to which, as we have said, the name monarchy more appropriately belongs, but to which, without the epithet *absolute* being prefixed, it is seldom or never applied.

As regards the governments of which an hereditary chief forms no part, it will be convenient to observe at the beginning, that the combinations of an elective chief with one or more democratic bodies are the only combinations which possess any interest for men; if indeed, judging from the past, we may not also say that they are the only ones which are practicable. And having premised this, we may say that the governments into the composition of which an hereditary chief does not enter are generally called *republics*, or *representative governments* (the relation of the democratic body or bodies in the government to the portion or portions of the state that appoint them being known by the name representation), or again, *pure representative governments*, as if to distinguish these from the forms of government in which a democratic body is united either with an hereditary chief and aristocratic body together, or with either of these by itself.

Thus far we have been employed in enumerating the forms of government. In our mode of enumeration we have been guided entirely by the terminology in common use, and have not sought to twist the names which men commonly apply to different forms of government, so as to make them suit a fanciful division.

We proceed now to consider the question, which is the best form of government? And in considering this question, we make abstraction of all local and occasional circumstances which are incidental to particular states, as well as of the present existence of some particular form of government in each particular state, and of the difficulties standing in the way of its removal.

Now a government is a means to a certain end. The best form of government is that which is best adapted to the attainment of the end. "The question with respect to government" being then, as Mr. Mill begins his well-known essay by observing, "a question about the adaptation of means to an end," it is necessary that we should first enunciate the end.

The end of government is the production of the greatest possible amount of happiness for the governed. Strictly and more largely, its ultimate end is the production of the greatest possible amount of human happiness. But inasmuch as each government contributes most to increase human happiness generally by applying itself to the production of the greatest possible amount of happiness among that particular portion of mankind over which it is set, and inasmuch as the attainment of the larger and general end is thus included in the attainment of the smaller and special end, it is sufficient, while it is more convenient for our purpose, if we keep in view the latter of the two ends only. With regard to the term happiness, by which we express the end of government, it is unnecessary that we should here analyze it. Suffice it to observe, that the increase of knowledge and intelligence, and the moral improvement of a nation, are among the most valuable of the objects included in the general end, happiness, which it is the duty of a govenment to strive after.

Now a government will have a greater or less tendency to increase the happiness of those who are governed,—

1. According as it is controlled, whether in the way of participation, or of election and consequent responsibility to the elector, by a greater or smaller number of such as, having an interest favourable to good government, are fit respectively to participate or to elect.

2. According as it tends, by its mode of construction, to prevent or to create diversity of interests.

3. According as it interferes less or more with those pursuits which are necessary to a very large majority of every community for the attainment of a livelihood.

The union of these three considera-

tions, which seem to be all that are pertinent to the subject, leads us to what we have called above a pure representative government. The first of the three makes for the existence of a democratic body, or union of such bodies, in the government; and while the second leads us to conclude against uniting with this body, or these bodies, a body of an aristocratic character, or an hereditary chief, the third points out one chief advantage of a democratic representative body, or union of such bodies, as compared with a government in which the great majority of the state directly participate.

It is necessary to enforce at somewhat greater length the considerations which we have adduced, and by which alone we test forms of government. In doing so, however, we shall not observe the order in which we have named them, but shall adopt a line of argument which leads most directly and conveniently to the "foregone conclusion" of a pure representative government.

It is desirable, in the first place, that the powers of government should not be vested solely in an individual, or in an aristocratic body, or (in other words) that the form of government should not be an absolute monarchy or an aristocracy, because there is a great probability that the despot or the aristocratic body will pursue respectively his or their own interest, to the detriment of the great bulk of the community, and because further the great bulk of the community are in such cases deprived of the means of improvement which a participation in government supplies. This improvement, we have already observed, is one chief way in which government may contribute to increase the happiness of the community. With reference to the probability of a despot or aristocratic body using his or their power, it is important to observe that we affirm no more than a probability. Some despots, or absolute monarchs, there have been in every way deserving of praise. There may have been also aristocratic bodies whose use of the powers possessed by them has been conducive to the general interest. But these are the exceptions. It is clearly in the nature of things probable that there will in such cases be an abuse of power; and the abstract question concerning forms of government is, after all, only a question of probability,—which form of government is it probable will conduce most to the happiness of a community?

Secondly, it is desirable that a share, whether direct or indirect, in the government should be possessed by as large a number as are likely to be fit to exercise the power thus conferred on them. There are two reasons for this extension of power, correspondent to the two reasons which have been already stated against its restriction to one or a few. First, the greater is the number of those who have a share in the government, the greater is the probability of the general interest being regarded; for the more widely are the powers of government distributed, the less division will there be in the community, and consequently the less will particular interests appear; and further, there is a greater probability, in an extensive distribution of political power, that all the disturbing effects of particular interests will neutralize one another, and merge in the pursuit of the general interest. Secondly, the more political power is extended the more widely will the improvement to be derived from its exercise be diffused.

But, in the third place, it is improbable that any very large number will be fit in any community to be members of a deliberative body, and have a direct share in legislation. Further, besides their being unlikely to possess the requisite amount of intelligence, it is unlikely that any very large number of men could spare time from such pursuits as are necessary to the attainment of a livelihood for the work of deliberation. Again, an assembly consisting of a majority of the community, or of a number approaching to the whole of the community, would, from its size, be unfit for the purpose of deliberation. For these three reasons it is desirable that the power which is extended through a large number should be one merely of election; and that the democratic body should be one not large, and in which the great bulk of the community have a direct share, but small, elected by the great bulk of the community, and (in

the common phrase) representing them. A large number will be found fit to elect, though not to deliberate; to judge of the amount of intelligence and honesty possessed by candidates for representation, though not to decide upon the many and important subjects which the representative is required to consider. The act of election, however frequent, will not interfere with the toils necessary for subsistence; and the amount of attention to political subjects occasioned by the duty of election will be sufficient to ensure the general intellectual development which we have spoken of as one of the tests of a good government.

Thus far we have merely been arguing for an extensive distribution of power, with which an hereditary chief or an aristocratic body might very possibly coexist in the government. It remains to complete the argument by pointing out the objections to a mixed government, or to a government which, by its very mode of construction, creates a diversity of interests. First, in so far as particular interests are embodied and made separately influential in a state, the attainment of what is for the general interest is impeded; secondly, from the separate embodiment of these particular interests collision ensues (for the much-talked-of balance of powers is only an imagination), and by collision is engendered ill-will. On the bad moral effects of the ill-will thus engendered it is unnecessary to dilate.

Such is a rapid sketch of the abstract argument in favour of a pure representative government; and such may be considered a brief general view of that science of government which employs itself in determining which form of government is best adapted to increase the happiness of the governed, or (briefly) is the best.

It cannot need to be remarked that when, abstracting ourselves from all particular circumstances of time and country, we conclude that a pure representative government is the best form of government, we do not contend either that such form of government should now be established in any particular states or state, or that it ought to have existed in all states in all periods of their histories. It were absurd even to think of a general distribution of political power, such as is employed in a pure representative government, in the early periods of ignorance and mental inactivity. And it were outrageous to attempt to establish in each state, in defiance of the many habits and interests which must have grown up around the forms of government already established, a new one, which is abstractly the best, or (in other words) is the best if we leave these habits and interests out of consideration.

Yet must not this science of government be pronounced idle and unprofitable. It may be out of the question, as generally it will be, to establish immediately, or perhaps even ultimately, that government which the abstract science tells us is the best. But though the goal of perfection be unattainable, it is useful to have it constantly in view. And while it will be the duty of each existing government, learning the feelings of its subjects and profiting by the opportunities of the time, to seek to approach nearer and nearer to that form of government which is abstractly the best, all such changes as are made with distinct reference to this abstract form of perfection will, as being made on the soundest principles, be the best.

GRACE, DAYS OF. [EXCHANGE, BILL OF.]

GRAND JURY. [JURY.]

GRAND SERJEANTY, one of the antient English tenures. Tenure by grand serjeanty is when a man holds his land or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his army, or to be his marshal, or to carry his sword before him at his coronation, or to be his carver, or his butler, or to be one of his chamberlains of the receipt of his exchequer, or to do other like services, &c. (Littleton, § 153.) The word serjeanty, *serjeantia*, is the same as service, *servitium*. Tenure by grand serjeanty still exists so far as relates to merely honorary services, but the burthensome incidents were taken away by the 12 Car. II. c. 24.

GUARDIAN, one who has the care of

a person and his property, who, by reason of his imbecility or want of understanding, is in law considered incapable of acting for his own interest. Guardians in the English law are appointed only to infants, though under the Roman law they were also assigned to idiots, lunatics, women, and sometimes prodigals. The law of England indeed provides guardians for idiots and lunatics, but the rules relating to them will be more conveniently considered under the head of LUNATIC, and in the Roman law the terms Tutor and Curator correspond in some degree to the English Guardian. [CURATOR.]

The usual division of guardians, according to the English law, and therefore the most convenient order in which to explain their office, is:—1. Guardians by the common law. 2. Guardians by custom. 3. Guardians by statute.

I. Guardians by the common law were of four kinds; guardians in chivalry, in socage, by nature, and for nurture.

Guardianship in chivalry is now abolished by the statute 12 Car. II. c. 24, which abolished the onerous portions of the feudal system. This guardianship arose wholly out of the principles of tenure, and it could only take place where the estate vested in the infant by descent. All tenants by knights' service, being males under 21, or females under 14, at the ancestor's death, were liable to it; and it continued over males till 21, and over females till 16 or marriage. It extended over the estate as well as the person of the infant, and entitled the lord to make sale of the marriage of the infant under the restriction of not making it a marriage of disparagement, and to levy forfeitures if the infant refused the marriage, or married, after tender of an alliance by the lord, against his consent. The lord was bound to maintain the infant; but subject to this obligation he was entitled to the profits of the estate for his own benefit. This guardianship being considered more an interest in the guardian than a trust for the ward, was saleable; and if not disposed of, passed at the lord's death to his personal representatives.

2. *Guardian in Socage.*—This also, like the former, is a consequence of tenure, and takes place only where lands of socage-tenure descend upon an infant under the age of 14. Upon attaining that age, the guardianship in socage ends, and the infant may appoint his own guardian. The title to his guardianship is in such of the infant's next of blood as cannot have the estate by descent in respect of which the guardianship arises, lest, it is said, the lamb should be delivered to the wolf to be devoured. The law of Scotland and the old laws of France prescribe a middle course: the estate is intrusted to the next in succession, because he is most interested in preserving it from waste, but he is excluded from the custody of the person of the ward. This is the principle upon which the Court of Chancery proceeds in its management of lunatics and their estates. The guardian in socage is entitled not only to the custody of the person and socage estates of the infant, but also to his hereditaments not lying in tenure, and even his copyhold estates, where no custom to the contrary exists in the manor of which they are held, and also his personal property. The guardianship in socage is regarded as a trust wholly for the infant's benefit, and is not saleable, or transmissible, but in the event of the death of the guardian the wardship devolves on the person next in degree of kindred to the infant, who cannot be his heir, and the guardian is accountable to the infant for the profits of his estate.

Guardianship in socage is however superseded both as to the person and estate of the infant, if the father appoints a guardian according to the statute, as will shortly be mentioned.

3. *Guardian by Nature.*—This species of guardianship has no connection with the rules of tenure. It extends only to the custody of the infant's person, and lasts till he attains 21. Any ancestor of the infant may be such a guardian, the first right being in the father, the next in the mother, and if they be dead the ancestor to whom the infant is heir has a right to the custody of his person. Until 14, it seems the guardian in socage is entitled to the custody of the person, and after that age the guardian by nature.

4. *Guardians for Nurture*—are the father and mother of the infant; in default of father or mother, the Ordinary, it is said, may appoint some person to take care of the infant's personal estate, and to provide for his maintenance and education, though this has been doubted. This species of guardianship extends only to the age of 14, in males and females. Both these last descriptions of guardianship are also superseded by the appointment of a guardian by statute.

Where an infant is without a guardian, the Court of Chancery has power to appoint one; and this jurisdiction seems to have vested in the king, in his Court of Chancery, upon the abolition of the Court of Wards. Where a proper case exists for the jurisdiction of this court, it will interfere not only with the property of the infant, but also with the custody of his person, and will, in case of any misbehaviour, remove a guardian, however he may have been appointed or constituted, and will appoint a proper guardian to the infant in his room. There was an instance of this jurisdiction in the case of the Duke of Beaufort *v.* Wellesley—where, though the father was alive, Lord Eldon deprived him of the custody of his children, as not being a fit person to have the charge of them. And though the infant may have elected and appointed a guardian, this will not exclude the jurisdiction of the Court of Chancery, but upon the case being brought before the court it will order an inquiry as to the fitness of the guardian appointed. All courts also have power to appoint a guardian *ad litem*, that is, to defend a prosecution or suit instituted by or against an infant. (Co. Litt., 88, b, Hargr. note.)

II. *Guardians by Custom.*—By the custom of the city of London the guardianship of orphans under age and unmarried belongs to the city; and in many manors particular customs exist relating to the guardianship of infants; but in the absence of any such, the like rules prevail as before mentioned of guardians in socage.

III. *Guardians by Statute.*—At common law no person could appoint a guardian, because the law appointed one in every case. The statute 4 & 5 Phil. and Mary, c. 8, seems to have given some powers to the fathers of infants to appoint guardians; but guardians by statute are now appointed by virtue of 12 Ch. II c. 24. Under this statute fathers, whether under age or of full age, may, by deed or will attested by two witnesses, appoint any person or persons (except Popish recusants) guardians of their unmarried children until they attain twenty-one, or for any less period. But by 1 Vict. c. 26, §§ 7, 8, no will made by a person under twenty-one years of age is valid.

A guardian appointed under this statute supersedes all other guardians, except those by the custom of London, or any city or corporate town in favour of which an exception is made, and is entitled to the custody of the infant's person, and his estate, real and personal. If two or more persons are appointed guardians under the provisions of this statute, the guardianship remains to the survivor. The words of the statute empower only a father to appoint a guardian, and consequently, though the omission was probably unintentional, it has been decided that neither a mother, nor grandfather, nor any other relation, can make such an appointment. Neither can a father appoint a guardian to his natural child: but in all these cases the Court of Chancery will appoint the persons named to be guardians if they appear to be fit persons to exercise the trust reposed in them.

Guardians are rarely now appointed by infants themselves; the Court of Chancery provides safer and more effectual means for the management of their property; and since in many cases the court will interfere by petition without the institution of a suit, a cheap and speedy mode of procuring its interference is afforded. The guardian is considered as a trustee for his ward, and is accountable for the due management of the infant's property, and is answerable not only for fraud, but for negligence or omission.

Guardian of the Spiritualities is the person to whom the spiritual jurisdiction of any diocese is committed during the vacancy of the see.

Guardian of the Temporalities is he to whom the temporal jurisdiction and the

profits of the see are committed during the like period.

The words guardian and warden are of the same signification: indeed they were formerly used indifferently. Thus the warden of the Cinque Ports was styled guardian, or in the old French, gardeyn, and churchwardens, gardeyns del eglise.

GUILDS. [MUNICIPAL CORPORATIONS.]

H.

HA'BEAS CORPUS is a writ at the common law, used for various purposes. It derives its name, like other writs, from the formal words contained in it. When the writ of Habeas Corpus is spoken of without further explanation, it always means the important writ which will presently be described; but it is also used for certain purposes in the courts of common law at Westminster, as for removing prisoners from one court into another, and for compelling the attendance of prisoners as witnesses, &c. But the great writ of Habeas Corpus is that which in cases of alleged illegal confinement is directed to the person who detains another; and the purport of the writ is a command to such person to produce the body of the prisoner, and to state the day and the cause of his caption and detention, and, further, to do, submit to, and receive (ad faciendum, subjiciendum et recipiendum) whatsoever the judge or court that awards the writ shall direct.

All persons, whether natives or aliens, are entitled to this writ. The decision of the judges of the King's Bench in the early part of the reign of Charles I., that they could not, upon a Habeas Corpus, bail or deliver a prisoner, though committed without any cause assigned, in cases where he was committed by the special command of the king, or by the Lords of the Privy Council, caused the parliamentary inquiry which was followed by the Petition of Right, 1626, which recites this judgment, and declares that no freeman shall be imprisoned or detained without cause shown, to which he may make answer according to law. The court, however, and the judges still endeavoured to uphold the usurpation of the crown, and consequently the statute 16 Car. I. c. 10, was made, which enacted that any person committed by the king himself or his Privy Council, or any members thereof, should have the writ of Habeas Corpus granted to him upon demand or motion made to the Court of King's Bench or Common Pleas, which should thereupon, within three court days after the return of the writ, examine and determine the legality of the commitment, and do justice in delivering, bailing, or remanding the prisoner. Still, however, new devices were made use of to prevent the due execution of this enactment, and eventually the statute 31 Chas. II. c. 2, was passed, which is called the Habeas Corpus Act, and is frequently spoken of as another Magna Charta. This statute declares the cases and mode in which this writ may be obtained; and lest this statute should be evaded by demanding unreasonable bail or sureties for the prisoner's appearance, it is declared by the 1 W. & M. stat. ii. c. 2, that excessive bail shall not be required. (Blackstone, *Com.*, vols. i. and iii.) The provisions of the 31 Chas. II. c. 2, are extended to Ireland by the Irish act, 21 & 22 Geo. III. c. 11.

It has been customary in times of alleged danger to suspend the Habeas Corpus Act. A suspension of the Habeas Corpus Act is effected by an act of parliament which empowers the crown, for a limited period, to imprison suspected persons without stating any reason for the imprisonment. "The effect of a suspension of the Habeas Corpus Act is not in itself to enable any one 'to imprison suspected persons without giving any reason for so doing.' But it prevents persons who are committed upon certain charges from being bailed, tried, or discharged for the the time of the suspension, except under the provisions of the suspending act, leaving, however, to the magistrate or person committing all the responsibility attending an illegal imprisonment. It is very common, therefore, to pass acts of indemnity subsequently for the protection of those who either could not defend themselves without making improper disclosures of the information on which they

acted, or who have done acts not strictly defensible at law, though justified by the necessity of the moment. See 57 Geo. III. c. 3 and c. 55, for instances of suspending acts; and 58 Geo. II. c. 6, for one of an indemnifying act." (Coleridge's *Note on Blackstone*, i. 136.)

The statute 31 Chas. II. c. 2, has been re-enacted or adopted, if not in terms yet in substance, in most of the American States; and the New York revised statutes (vol. ii. p. 561) provide for relief under the writ *de homine replegiando*, in favour of fugitives from service in any other state; but this provision has been held to be contrary to the constitution and laws of the United States, and void in respect to slaves being fugitives from states where slavery is lawful. (Kent's *Com.*)

The 56 Geo. III. c. 100, which was passed "for more effectually securing the liberty of the subject," after reciting that the existing acts only apply to cases of imprisonment on criminal charges, enacts that if any person is imprisoned, except for crime or debt, any baron of the exchequer, as well as any judge of either bench in England or Ireland, shall, on complaint on behalf of the party confined, if reasonable cause appear to them, award in vacation time a writ of Habeas Corpus, returnable immediately before the judge awarding the same, or any other judge of the same court.

The statute 31 Chas. II. c. 2, introduced no new principle into the English law. The great charter (Magna Charta) declares that no freeman shall be taken or imprisoned but by the lawful judgment of his equals, or by the law of the land (c. 29). From the date of the great charter, at least, if a man was confined in prison on a criminal charge, he could apply to the Court of King's Bench for the writ of Habeas Corpus ad subjiciendum. This writ was directed to the person who detained the prisoner in custody, and it required him to produce the prisoner in court and the warrant of commitment, that the court might judge if the commitment was legal, and admit him to bail, send him back to prison, or order him to be discharged, according to the circumstances of the case. This writ could not be refused. The object of the statute of Charles was to prevent the abuses which had grown up to the detriment of this important privilege.

Habeas Corpus is not a form known in the Law of Scotland. The form by which a person imprisoned gets his trial brought on, or his release if he is not brought to trial, is there called 'Running Letters.'

HACKNEY COACH. [METROPOLITAN STAGE CARRIAGE.]

HERETICO COMBURENDO, WRIT DE. [HERESY.]

HAMLET. [PARISH.]

HANAPER, in low Latin *hanaperium*, a hamper. The Hanaper Office was one of the offices of the Court of Chancery in which writs and their returns relating to the subject were kept. Writs concerning matters in which the crown was interested were kept in the Petty Bag office. The clerkship of the hanaper had become almost a sinecure, and was abolished by 5 & 6 Vict. c. 103, and duties transferred. It is said that anciently the two descriptions of writs were separately kept in a hamper and a bag (baga).

HAND-FASTING. [BETROTHMENT.]

HAND-WRITING, PROOF OF. [EVIDENCE.

HARDWARE AND CUTLERY. The principal seats of this important branch of manufactures are at Sheffield and Birmingham. In 1841 the number of persons employed in making various articles of cutlery in Sheffield and the surrounding villages was 8564, and 729 were employed in making hafts and scales in connexion with cutlery. The number of file-makers was 2854; 1595 persons were employed in making various other kinds of tools; 771 in the manufacture of shovels, fire-irons, and other descriptions of hardware goods. In Birmingham and the neighbourhood, 5188 persons were employed in 1841 in the manufacture of hardware, 1093 of whom were employed in the manufacture of tools. There are only a few cutlers in Birmingham, and in fact most of the cutlery which is made in this country is manufactured at Sheffield, including a great part of the "London made" knives and razors which are stamped with the names of metropolitan cutlers. The

number of cutlers in the metropolis in 1841 was 657. The population of Sheffield increased from 45,755 in 1801 to 109,597 in 1841, and that of Birmingham and the suburbs increased in the same period from 73,670 to 190,542. Hence there can be no doubt that the staple manufacture of each of these places has been greatly extended during the present century. Within the last thirty years great improvements have been effected in the modes of production, and in the case of some articles the reduction in price amounts to nearly 100 per cent.

In the eight years from 1820 to 1827 inclusive, the annual average weight and declared value of hardware and cutlery exported was 10,238 cwts., valued at 1,274,187*l.*

In the seven years from 1828 to 1834 the annual average was 14,751 cwts., valued at 1,455,941*l.*

The exports in each year from 1836 to the present time were as under:—

	Cwts.	£.
1836 .	421,442	2,271,313
1837 .	267,433	1,460,807
1838	305,898	1,498,327
1839 .	423,537.	1,828,521
1840 .	299,900	1,349,137
1841 .	353,348	1,623,961
1842 .	304,240	1,398,487
1843 .	343,664	1,745,519
1844 .	..	2,167,673
1845 Jan. 5 to June 5 ..		877,355

In 1836, a year of great mercantile speculation, the exports of hardware and cutlery to the United States of North America amounted in value to 1,318,412*l.*, or nearly the value of the whole of the hardware and cutlery exported to all parts of the world in 1842, in which year the exports to the United States amounted only to 298,881*l.* The cessation of the demand from this quarter and the depressed state of the home market in 1841 and 1842 had a most disastrous effect upon the prospects of Sheffield, and about two thousand houses in the town became uninhabited. The principal countries to which hardware and cutlery was exported in 1843 were as follows:—

	£.
United States of North America	448,341
Germany	159,889
East India Company's Territories and Ceylon . .	142,607
British North America . .	102,260
France	92,553
Brazil	80,070
British West Indies . .	80,040
Italy	61,992
Chili	53,413
Foreign West Indies . .	48,609
Holland	47,045
Russia	44,203
British Australasia . .	43,270
Rio de la Plata . . .	41,005
Peru	33,173
Belgium	30,717
All other countries . .	236,331
Total . . .	1,745,518

The cutlery manufactured in Belgium is superior to that made in France and Germany, but is inferior to the English cutlery. A few years ago considerable quantities of Belgium cutlery were imported into this country for re-exportation, and it was discovered that in many cases the marks of English manufacturers were stamped on the articles. An act was passed under which goods thus surreptitiously marked are forfeited. Liège and Namur are the principal seats of the cutlery and hardware manufacture.

Cutlery is an important branch of manufacture in France, and is carried on principally at Langres, Thiers, Chatellerault, and St. Etienne. In 1835 the value of French cutlery exported amounted only to 61,065*l.*

The number of persons employed in the manufacture of hardware and cutlery in the United States of North America, according to the census of 1840, was 5492. Pittsburg is the principal place where this manufacture is carried on.

HAWKER. [PEDLAR.]

HEADBOROUGH, under the Saxon domination in England, was the chief of the ten pledges or tithing; the other being denominated *landboroughs*, or inferior pledges. (See p. 239.)

HERALD, an officer whose duty during the middle ages was to carry challenges or peaceful messages from one prince or nobleman to another to

proclaim peace or war, to lay out the lists in jousts or tournaments, to be the witness of all combats, whether general or particular, and to record in writing the names of those who behaved most valiantly, to number the dead after battle, and specially to supervise all matters connected with the bearing of coat-armour, the marshalling of processions, and other state ceremonies. His functions were something like those of the Greek *kerux* (κήρυξ), and the Roman *Fecialis;* but the origin of the name is much disputed, and the actual date of the institution uncertain. The word *Heraldus* occurs in the imperial constitutions of Frederick Barbarossa, A.D. 1152, about the same time to which the origin of heraldry is with most reason assigned. The earliest mention of a herald in England is in a pell-roll of the 12th Edward III.; but there is little doubt that the office existed as early at least as the dawn of hereditary coat-armour. The English heralds were first incorporated by Richard III. [HERALDS' COLLEGE.] There are three orders or grades of heralds, namely, kings of or at arms, heralds, and pursuivants. They were anciently created with much ceremony, and the mode is curiously detailed by Gerard Legh apud Upton. "It is necessary," says he, "that all estates should have couriers as their messengers for the expedition of their business, whose office it is to pass and repass on foot, being clad in their prince's colours 'parted upright;' that is to say, half of one colour and half of another, with the arms of their sovereigns painted on the boxes in which they carried their despatches, and which were fixed to their girdle, on the left side. It was not permitted to them to bear the arms of their lord in any other manner." "They were knights," he adds, "in their offices, but not nobles, and were called knights-caligate of arms, because they wore 'startuppes' (a sort of boot or gaiter) 'to the middle leg.' When they had conducted themselves properly in this situation for seven years, they were made chevaliers of arms, and rode on horseback to deliver their sovereign's messages, clad in one colour, their garments being only guarded or trimmed with the colour of their sovereign, and bearing their boxes aforesaid, with the arms painted on them, on the left shoulder, 'and not elsewhere.'" From these runners and riders the three orders of heralds were supplied, and the chevalier of arms, having served another seven years, was created a pursuivant. The herald of the province, to whom he was to be pursuivant, wearing his coat of arms, took the candidate by his left hand, holding in his right a cup of silver, filled with wine and water, and leading him to his sovereign, in the presence of many witnesses duly summoned for this purpose, inquired by what name the pursuivant was to be created; and upon the sovereign's answer, proclaimed his style accordingly, pouring some of the wine and water upon his bare head. He then invested him with the tabard, or herald's coat, emblazoned with the arms of the sovereign, but so that the sleeves hung upon his breast and back, and the front and hind parts of the tabard over his arms, in which curious fashion he was to wear it till he became a herald. Strutt has given a representation of the pursuivant so attired from the Harleian MS. 2278, without being aware of the distinction. The oath of office was then administered to him, and lastly the sovereign presented him with the silver cup aforesaid. Having once been made pursuivant, he might be created a herald, "even the next day," which was done by the principal herald or king of arms leading him in like manner before the sovereign, but bearing a gilt instead of a silver cup, and turning the tabard so that the sleeves hung in their proper place over the arms. A collar of SS was then put about his neck, one S being argent, or silver, the other sable, or black, alternately, and when he was named, the prince himself poured the wine and water on his head, and after the oath was administered gave him the cup as before; whereupon the herald cried, "A largess." The kings of arms were created and solemnly crowned by the princes themselves, and distinguished from the heralds by richer tabards, the embroidery being on velvet instead of satin, gilt collars of SS, and coronets composed of a

plain circle of gold surmounted by sixteen strawberry leaves, eight of which are higher than the rest.

Modern heralds of all classes are now made and appointed by the earl marshal, and their functions and privileges are much abridged and disregarded. The present number in England is fourteen, viz.: four kings of arms—Garter, Clarencieux, Norroy, and Bath. The second and third are provincial kings; Clarencieux has power over all parts of England south of the Trent, and Norroy over all parts north of it. Six heralds—Somerset, Chester, Windsor, Richmond, Lancaster, and York; and four pursuivants—Rouge Dragon, Portcullis, Blue Mantle, and Rouge Croix. In Scotland there is one king at arms, named Lyon; and in Ireland one, named Ulster. To these regular officers are sometimes added, by command of the king to the earl marshal, a herald or pursuivant extraordinary. Such were the heralds Arundel, Norfolk, and Mowbray; and on the occasion of the funeral of the late King William IV., Mr. Albert Woods, son of Sir W. Woods, Clarencieux king of arms, was created Fitzalan pursuivant extraordinary.

HERALDS' COLLEGE, or COLLEGE OF ARMS, a corporation founded by Richard III. in the first year of his reign by a charter dated the 2nd of March, 1483, in which he gives to the principal officers of the corporation a house called Colde Arbor, in the parish of All Hallows the Less, London. In the first year of the reign of Henry VII. this house was seized into the king's hands under the Act of Resumption as the personal property of John Writhe, then garter king at arms. During the reign of that king and of his successor Henry VIII. the heralds made several unsuccessful attempts by petition to obtain a restoration of it, or the grant of some other building for their general use. King Edward VI., in the third year of his reign, by a charter dated June 4th, confirmed to them all their ancient privileges; and Philip and Mary, by charter of the 18th of July, 1554, re-incorporated them, and granted to them Derby House, then occupying the site of the present college on St. Benet's Hill, near St. Paul's Church-yard. The old building was destroyed in the great fire of London, but all the books, papers, &c. were fortunately saved, and removed to the palace in Westminster, where the heralds held their chapters, &c., until the college was rebuilt. The corporation consists of the three kings at arms—Garter, Clarencieux, and Norroy (Bath not being a member); six heralds, and four pursuivants. [HERALD.] The arms of the college are argent, a cross, gules between four doves rising azure. Crest, on a ducal coronet, Or a dove rising azure. Supporters, two lions rampant gardant argent, ducally gorged Or. There is a heralds' college in Scotland, composed of Lyon king at arms, six heralds, and six pursuivants.

HERALDRY, the art of arranging and explaining in proper terms all that appertains to the bearing of coats of arms, badges, and other hereditary or assumed marks of honour; also the art of marshalling processions and conducting the ceremonies of coronations, instalments, creations of peers, funerals, marriages, and all other public solemnities.

The origin of heraldry, in the first and most commonly understood sense, has been attributed, by the general consent of the best writers on the subject, to the necessity for distinguishing by some outward sign, amidst the confusion of battle, the principal leaders during the expeditions for the recovery of the Holy Land. But nothing is absolutely known concerning it beyond the fact that the middle of the 12th century is the earliest period to which the bearing of heraldic devices, properly so called, can be traced; and the commencement of the 13th, the time about which they became hereditary.

The earliest roll of arms of which we have any notice is of the reign of Henry III.; and the reign of Edward I. presents us with the earliest heraldic document extant. The famous roll of Caerlaveroch, a poem in old Norman French, rehearses the names and armorial ensigns of all the barons, knights, &c., who attended Edward I. at the siege of Caerlaveroch castle, A.D. 1300. Heraldry is therein first presented to us as a system. The principal rules and terms of the art were then

in existence, and from about that time the terms are continually found in the fabliaux and romances of France and England.

The oldest writer on heraldry whose work has descended to us is Nicholas Upton, whose treatise 'De Militari Officio' was composed in the reign of Henry V., and translated in that of his successor by Juliana Berners, in the work known as the 'Boke of St. Albans.' As Upton quotes no earlier authorities, his definitions and explanations can only be looked upon as assertions made nearly three hundred years after the origin of the practice, and consequently to be believed, or not, according to the discretion of the reader. In the reign of Richard III. the English heralds were incorporated and the College of Arms founded, and in the following century a swarm of writers arose both in France and England, each contradicting the other, and wasting much learning and research in the most absurd and idle controversies.

On the decline of chivalry the study of heraldry became gradually neglected, and the art, which had formed for centuries a portion of the education of princes, and occupied the attention of some of the most learned men in Europe, was abandoned to the coach-painter and the undertaker, while kings of arms and pursuivants were looked upon as mere appendages of state pageantry, their office ridiculed, and their authority defied.

That the pedantry of such writers as Morgan, Ferne, Mackenzie, and others, contributed to these results, there can be little doubt. A taste for the critical study of antiquities generally is now however reviving throughout Europe, and the use of heraldry as a key to history and biography is daily becoming more acknowledged.

The rules of heraldry as now practised at the College of Arms are, as we have before remarked, comparatively modern, and vary in some points from those observed in France and Germany.

According to the received authorities there are ten classes of arms.

1. Arms of *Dominion*, being those which princes bear as annexed to the territories they govern.

2. Of *Pretension*, those borne by princes who are not in possession of the dominions to which such arms belong, but who claim or pretend to have a right to such possession, as for instance the kings of England from Edward III. to George III. quartered the arms of France.

3. Arms of *Community*, being those of bishoprics, cities, universities, and other bodies corporate.

4. Of *Assumption*, such as are assumed by a man of his proper right without the grant of his prince, or of a king at arms. As for instance, when a man of any degree whatsoever has taken prisoner in lawful war any gentleman, nobleman, or prince, he may bear the arms of that prisoner, and transmit them to his heirs for ever.

5. Arms of *Patronage*, such as governors of provinces, lords of manors, patrons of benefices, &c., add to their family arms, as a token of their superiority, rights, and jurisdiction.

6. Arms of *Succession*, borne by those who inherit certain estates, manors, &c., either by will, entail, or donation.

7. Arms of *Alliance*, such as the issue of heiresses take up to show their maternal descent.

8. Arms of *Adoption*, borne by a stranger in blood, with the special permission of the prince, applied for in order to fulfil the will of the testator who may bequeath certain monies or estates on condition of the party's assuming his name and arms.

9. Arms of *Concession*, augmentations granted by the prince of part of his own ensigns or regalia to such persons as he pleases to honour therewith.

10. Arms *Paternal* and *Hereditary*, such as are transmitted from the first possessor to his son, grandson, great-grandson, &c.; thereby forming complete and perfect nobility. The son being a gentleman of second coat-armour, the grandson a gentleman of blood, and the great-grandson a gentleman of ancestry.

These several sorts of arms are displayed on shields or escutcheons, and on banners, the ground of either being called the field, and the figures borne upon it the ordinaries and charges.

HEREDITAMENT. [DESCENT.]

HERE'DITAS JACENS. [ABEYANCE.]

HERESY. This word is the English form of the Greek Haéresis (αἵρεσις). It signifies literally 'a choice,' and hence it came to denote an opinion on any subject; and it was used to express a sect in philosophy. The word occurs in the New Testament, sometimes simply to denote a religious body, and sometimes as a term of reproach applied to the religious opinions of persons which differed from the opinion of him who used the term. When ecclesiastical councils determined what was the orthodox or Catholic faith, then Christians who would not acknowledge the decisions of such councils were called Heretics, and their guilt was expressed by the term Heresy: those who reject Christianity altogether are infidels and unbelievers.

The fifth title of the first book of the Code of Justinian contains penalties against Heretics, Manichæans, and Samaritans; which, in some cases, extended to death. Heretical books were ordered to be burnt. Before the Reformation in England heresy was the holding of opinions contrary to the Catholic faith and the determination of Holy Church: at least this is the definition of heresy in the statute 2 Hen. IV. c. 15. The court in which a man could be convicted of heresy, according to the common law, was that of the archbishop in a provincial synod. After conviction the criminal was delivered up to the king to do what he pleased with him. If the criminal had abjured his heresy and then relapsed, the king in council, upon a second conviction, might issue the writ De Haeretico comburendo, upon which the criminal was burnt alive. One Sawtre, it is said, was the first man burnt alive for heresy in England, and the writ De Haeretico comburendo was formed in his case. But the statute 2 Hen. IV. c. 15, empowered the diocesan alone, without a synod, to commit a man for heretical opinions, and to imprison him as long as he chose, or fine him; or if he refused to abjure, or after abjuration relapsed, the sheriff, mayor, or other officer, who should be present, if required, with the ordinary or his commissary, when the sentence was pronounced, was to take the convict and burn him openly, without waiting for the king's writ.

It is unnecessary to mention the statutes of Henry VIII. relating to heresy. The Reformation was not fully established till the reign of Elizabeth, and the statute 1 Elizabeth, c. 1, declares that the persons to whom the queen or her successors shall give authority to judge of heresies shall not declare any matters to be heresies except "such as heretofore hath been adjudged heresy by the authority of the canonical Scriptures, or by the first four general councils, or any of them, or by any other general council wherein the same was declared heresy by the express and plain words of the canonical Scriptures, or such as shall hereafter be adjudged heresy by parliament with consent of the clergy in convocation." But there is no statute that determines what heresy is. After this statute of Elizabeth the proceedings in cases of heresy remained as they were at common law; for this statute repealed all former statutes about heresy, which was accordingly punished, after the Reformation was fully established, by ecclesiastical censures, and by burning alive a criminal who had been convicted, in the manner above described, in a provincial synod. The writ for burning the heretic could not be demanded as a matter of right, but was left to the discretion of the crown; and both Elizabeth and James the First, in their discretion, thought proper to grant the writ. Elizabeth, it is said, burnt alive two Anabaptists, and James burnt alive two Arians.

The statute of 29 Charles II. c. 9, abolished the writ De Haeretico comburendo. Heresy is now left entirely to the ecclesiastical courts; and the punishment of death in consequence of any ecclesiastical censure was by that act abolished in England. As Elizabeth and James practically showed their approbation of burning heretics alive, so Lord Coke (3 *Instit.* c. 5) approves of the punishment.

At present the ecclesiastical courts punish for heresy, when they do punish, *pro salute animae*, as it is termed,—that is, solely out of regard to the soul of the offender. But it is difficult to say at present what can be called heresy; and

perhaps it is difficult to say what is exactly the punishment for it. It is remarked in the Report of the Criminal Law Commissioners on Penalties and Disabilities in regard to Religious Opinions, 1845 (p. 22), that "the jurisdiction, as it may affect the laity, and clergy not of the established church, or indeed as administered *pro salute animae*, appears to militate with the principles contained in modern acts of toleration, that are inconsistent with the infliction of punishments for mere opinions with respect to particular articles of faith or mode of worship." Indeed there seems no risk in asserting that much of the jurisdiction of the ecclesiastical courts in respect to heresy, whether it shows itself in speaking, writing, or preaching, has been destroyed by the various Toleration Acts. The Criminal Law Commissioners see no reason for retaining the jurisdiction of the ecclesiastical courts in matters of heresy, "except, so far as it may be directed, to prevent ministers of the Established Church from preaching in opposition to the Articles and doctrine of the establishment of which they receive their emoluments." So far as this, there is certainly no objection. There ought to be some speedy mode of depriving a man of these emoluments which he accepts upon certain terms. He who will receive alms [FRANK-ALMOIGNE], and yet preach against the doctrines which he is paid for teaching, deserves the reprobation of all mankind; and those who dislike ecclesiastical authority most could not be better pleased than to see such an offender handed over to his brethren to be dealt with in any way that the law of the church provides, to which the offender has solemnly submitted himself.

In the year 1845 proceedings were commenced in the Arches' Court of Canterbury against the Rev. Mr. Oakley for writing, publishing, and maintaining doctrines contrary to the articles of religion.

The history of Heresy in England is instructive. The change from burning alive to the free expression of opinion on religious matters is one of the steps in the social progress of England. For some other matters connected with the subject, see BLASPHEMY.

HERIOT is a feudal service consisting in a chattel which is given to the lord on the death of a tenant, and in some places upon alienation by a tenant. It is stated to have originated in a voluntary gift made by the dying tenant to his lord and chieftain of his horse and armour. This payment was first usual, then compulsory; and at an early period we find the antient military gift sinking into the render of the best animal (at the election of the lord) possessed by the tenant, and sometimes a dead chattel, or a money commutation.

Heriots are either heriots-custom or heriots-service. Where a heriot is due from the dying tenant by reason of his filling the character or relation of tenant within a particular seigniory, honour, manor, or other district, in which it has been usual from time immemorial to make such renders upon death or alienation, it is called *heriot-custom: heriot-service* is a heriot due in respect of the estate of the tenant in the particular land held by him.

For heriot-custom the lord cannot distrain, but he may seize the animal which he claims as heriot: for heriot-service the lord may either seize or distrain.

Heriot-custom formerly prevailed very extensively in freehold lands, but is now more commonly found in lands of customary tenure, whether copyholds,—the conventionary estates in Cornwall, held under the duke of Cornwall,—the customary estates called *customary freeholds* in the northern border counties,—or lands in antient demesne.

Heriots were known in England before the complete development of the feudal system which followed upon the Norman conquest. The Normans introduced reliefs without abolishing the analogous heriot. The *heregeate* (heriot) is mentioned and fixed by the laws of Canute, 67, &c. The Dano-Saxon "heregeat" is derived by Spelman, and after him by Wilkins, from *herge* (more properly *here*), army. A more probable derivation would be from the word "herr," lord. In Scotland, where the render upon the death of the tenant is a pecuniary payment, it is called "lord's money," "hergeld," or herrezeld."

HIGH COMMISSION COURT. [ESTABLISHED CHURCH, p. 849.]

HIGH CONSTABLE. [CONSTABLE.]

HIGH TREASON. [TREASON.]

HIGHWAY. [WAYS.]

HOLY ALLIANCE. The name commonly given to the convention concluded at Paris on the 26th September, 1815, between Alexander, Emperor of Russia, Francis, Emperor of Austria, and Frederick William, King of Prussia. The draught of the convention was shown to Lord Castlereagh by the Emperor of Russia before it had been seen by either the Emperor of Austria or the King of Prussia. (*Debates in Parliament.*) It was signed by the three princes with their own hands, without being countersigned by any minister. The document, which was first published by Alexander on Christmas-day following, commenced by an announcement of the intention of the subscribing parties to act for the future upon the precepts of the gospel; which they define to be those of justice, Christian charity, and peace. Then follow three articles, which, after stating the Scriptural command to all men to consider one another as brethren, deduce from it the inference, that the three contracting princes will remain united to each other by the bonds of a true and indissoluble fraternity, and that they will conduct themselves to their subjects and armies as the fathers of families. The third article is an invitation to other powers to join the confederacy. When this treaty was communicated to the English court, a reply was returned to the effect, that the forms of the British constitution did not permit the king formally to accede to it, but that no other power could be more inclined to act upon the principles which it seemed to involve. At this time many liberal politicians throughout Europe, especially in Germany, looked to the Holy Alliance with most sanguine expectations of its happy results. Most of the European princes finally became members of the Holy Alliance. At the congress of Aix-la-Chapelle, held in 1818, a declaration was prepared and subsequently published which stated that peace was the object of the alliance. This congress was the first of a series of congresses which were held for the purpose of regulating the policy of the Continent, and of keeping down especially the German, Italian, and Spanish liberals. [CONGRESS.] In 1821 England withdrew from the political system which the Holy Alliance was endeavouring to establish. The allied powers had issued a circular on the 8th December, 1820, from Troppau, where they were then assembled in congress, to consider the means of putting down the revolution which had just taken place in Naples. This note, which was addressed to the ministers and chargés d'affaires at the German and northern courts, drew from Lord Castlereagh, the then English minister for foreign affairs, a despatch addressed to his Majesty's missions at foreign courts, and dated the 19th January, 1821, in which it was intimated that this government could not acquiesce in the principles announced in the circular of the allied princes, or in their proposed application. England also protested against the invasion of Spain in 1823. After the death of the Emperor Alexander it may be difficult to say whether or not the convention so called had any substantial existence.

HOMAGE. [FEUDAL SYSTEM, p. 23; FEALTY.]

HOMICIDE. [MURDER.]

HOSPITALLERS. Hospitaller, in its literal acceptation, means one residing in an hospital, in order to receive the poor or stranger; from the Latin *hospitalarius*, a word found only in the language of the lower age. The *Knights Hospitallers* were an order of religious formerly settled in England, who took their name and origin from an hospital built at Jerusalem for the use of pilgrims going to the Holy Land, dedicated to St. John. The first business of these knights was to provide for such pilgrims at that hospital, and to protect them from injuries and insults upon the road. They were instituted about A.D. 1092, and were very much favoured by Godfrey of Bouillon and his successor Baldwin king of Jerusalem. They followed chiefly St. Austin's rule, and wore a black habit with a white cross upon it. They soon came into England, and had a house built for them in London A.D. 1100; and from a poor and mean beginning obtained so great wealth, honours, and exemptions, that their Supe-

rior here in England was the first laybaron, and had a seat among the lords in parliament; and some of their privileges were extended even to their tenants. The order was suppressed in England.

There were also sisters of this order, of which one house only existed in England, at Buckland in Somersetshire.

Upon many of their manors and estates in the country the Knights Hospitallers placed small societies of their brethren, under the government of a commander. These were allowed proper maintenance out of the revenues under their care, and accounted for the remainder to the grand prior at London. Such societies were in consequence called Commanderies. What were commanderies with the Hospitallers were called Preceptories by the Templars, though the latter term was in use with both orders.

The Knights Hospitallers had several other designations. They were at first called Knights of St. John of Jerusalem; afterwards, from their fresh place of settlement, Knights of Rhodes; and after the loss of that island, A.D. 1522, Knights of Malta, from the island which had been bestowed upon them by the emperor Charles V. (Tanner, *Notit. Monast.*, edit. Nasmith, præf. p. xv.; Newcourt, *Repert. Eccles.*, vol. i. p. 530; ii. p. 199; Dugdale, *Monasticon Anglicanum*, new edit., vol. vi. p. 786.)

HOSPITALS. [SCHOOLS OF MEDICINE.]

HOTCHPOT. [STATUTE OF DISTRIBUTIONS.]

HOUSEBREAKING AND BURGLARY. The derivation of the word burglary is quite uncertain. By some writers it is supposed to have been introduced by the Saxons, and to be compounded of *burg*, a castle or house, and *larron* or *latro*, a thief. But Spelman conceives that the term was introduced into the criminal law of England from Normandy, and says that he finds no traces of it among the Saxons. (Spelman, *Glossary*, "Burglaria," "Hamesecken.)" The offence of burglary at common law is defined to be "a breaking and entering the dwelling-house of another in the night, with intent to commit some felony within the same, whether such felonious intent be executed or not." By 1 Vict. c. 86, "night-time" is declared to be from nine o'clock in the evening till six o'clock the next morning. By dwelling-house is meant the actual and personal residence of a man. Breaking within the "curtilage" of a dwelling-house and stealing is a different offence. If a dwelling-house is feloniously entered at any other time than in the night-time, the offence is simply house-breaking. Burglary is now only punishable with death when violence is used: in other cases the punishment is transportation for life or for not less than ten years, or imprisonment for a term not exceeding three years. Stealing in a dwelling-house, with menace or threat, is felony, and punishable with transportation for not exceeding fifteen years nor less than ten years, or imprisonment for not exceeding three years. In both cases principals in the second degree and every accessory before the fact are liable to the same punishment as the principal in the first degree. The punishment of every accessory after the fact (except only a receiver of stolen property) is imprisonment for not exceeding two years.

Committed for burglary in England and Wales in the five years from 1835 to 1839, 1657; in the five years from 1840 to 1844, 2873. In 1837 the capital punishment for burglary was abolished, except in case of burglary attended with violence to persons. The number of persons committed for burglary under circumstances of violence was 84 in the seven years ending 1844.

Committed for house-breaking in the five years ending 1839, 2326; in the ensuing five years, 3212.

The number of persons committed for breaking within the curtilage of dwelling-houses and stealing was 401 in the first five and 405 in the second five of the ten years from 1835 to 1844. The increase in the committals for burglary and house-breaking was 54 per cent. on a comparison of these two periods.

HUDSON'S BAY COMPANY AND THE FUR TRADE. In the sixth century the skins of sables were brought for sale from the confines of the Arctic Ocean to Rome, through the intervention of many different hands, so that the ultimate cost to the consumer was very great. For several centuries after that

time furs could not have become at all common in western Europe. Marco Polo mentions as a matter of curiosity in 1252, that he found the tents of the Khan of Tartary lined with the skins of ermines and sables which were brought from countries far north, from *the land of darkness*. But in less than a century from that time the fashion of wearing furs must have become prevalent in England, for in 1337 Edward the Third ordered that all persons among his subjects should be prohibited their use unless they could spend one hundred pounds a year. The furs then brought to England were furnished by the traders of Italy, who procured them from the north of Asia.

The fur trade was taken up by the French colonists of Canada very soon after their first settlement on the St. Lawrence, and the traders at first made very great profits. The animals soon became scarce in the neighbourhood of the European settlements, and the Indians were obliged to extend the range of their hunting expeditions, in which they were frequently accompanied by one or other of the French dealers, whose object it was to encourage a greater number of Indians to engage in the pursuit and to bring their peltries, as the unprepared skins are called, to the European settlements. When the hunting season was over the Indians came down the Ottawa in their canoes with the produce of the chase, and encamped outside the town of Montreal, where a kind of fair was held until the furs were all exchanged for trinkets, knives, hatchets, kettles, blankets, coarse cloths, and other articles suited to their wants, including arms and ammunition. A large part of the value was usually paid to the Indians in the form of ardent spirits, and scenes of riot and confusion were consequently of frequent occurrence.

The next stage of the Canadian fur trade was when some of the European settlers, under the name of *Coureurs des Bois*, or wood-rangers, set out at the proper season from Montreal in canoes loaded with various articles considered desirable by the Indians, and proceeded up the river to the hunting-grounds. Here they remained for an indefinite time, sometimes longer than a year, carrying on their traffic with the Indian hunters, and when their outward investments were exhausted, they returned, their canoes in general loaded with packs of beaver-skins and other valuable peltries. While engaged in these expeditions some of them adopted the habits of the tribe with whom they were associated, and formed connexions with the Indian women. This trade was for some time extremely profitable; the men by whom it was conducted, the *Coureurs des Bois*, were usually without capital, and their investments of European goods were furnished by the storekeepers of Montreal, who drew at least their full proportion of profit from the adventure. The return cargo was generally more valuable than the investments, in the proportion of six to one. Thus where the investment amounted to one thousand dollars, and the peltries returned sold for six thousand, the storekeeper first repaid himself the original outlay, and usually secured for himself an equal amount for interest and commissions, after which the remaining four thousand dollars were divided between himself and the Coureur des Bois.

The Hudson's Bay Company, established with the express object of procuring furs, was chartered by Charles II. in 1670. This association founded several establishments in America, and has ever since prosecuted the trade under the direction of a governor, deputy-governor, and a committee of management chosen from among the proprietors of the joint-stock, and resident in London. By this charter the Company obtained, as absolute lords and proprietors, all the lands on the coasts and confines of the seas, lakes, and rivers within the Hudson's Straits, not actually possessed by the subjects of any other prince or state, and the exclusive right of trading with the Indians. Persons who intruded on the Company's privileges were to forfeit merchandise and ship, one half to the Crown and one-half to the Company. In 1749 the Hudson's Bay Company had only four forts, occupied by 120 men, and they were threatened with the deprivation of their charter from non-user. Their exports for the ten preceding years had amounted to 36,000*l.*;

their establishment expenses and management to 157,000*l.*, their imports to about 280,000*l.*; and their net profit was estimated at about 8000*l.* a year. At this time the value of the furs imported from Canada into Rochelle amounted to 120,000*l.*

The charter of the Hudson's Bay Company did not extend to Canada, which in 1670 belonged to France, and when Canada was ceded to England in 1763, a vast region was opened to the fur traders without a licence. In 1783 various associations and a number of individuals were combined into one great body, the North-West Fur Company. A most interesting account of this association is given in Mr. Washington Irving's 'Astoria.' This company consisted of twenty-three shareholders, or partners, comprising some of the most wealthy and influential British settlers in Canada, and employed about 2000 persons as clerks, guides, interpreters, and boatmen, or *voyageurs*, who were distributed over the face of the country. Such of the shareholders as took an active part were called agents; some of them resided at the different ports established by the Company in the Indian territory, and others at Quebec and Montreal, where each attended to the affairs of the association. These active partners met once in every year at Fort William, one of their stations near the Grand Portage on Lake Superior, in order to discuss the affairs of the Company, and agree upon plans for the future. The young men who were employed as clerks were, for the most part, the younger members of respectable families in Scotland, who were willing to undergo the hardships and privations accompanying a residence for some years in these countries, that they might secure the advantage of succeeding in turn to a share of the profits of the undertaking, the partners, as others died or retired, being taken from among those who, as clerks, had acquired the experience necessary for the management of the business. About 1806 the hunters of the North-West Company are supposed to have first crossed the Rocky Mountains and to have established posts on the northern head-waters of the Columbia. In 1813 the Company bought Astoria, on the Columbia River, which Mr. Astor, of New York, and his other partners, were induced to relinquish in consequence of the war between Great Britain and the United States. The activity of the North-West Company at length roused the Hudson's Bay Company. In 1812 the latter Company exercised for the first time its rights to colonize, by selling a tract of land on Lake Winnipeg and the Red River to Lord Selkirk, who introduced a considerable number of persons from Scotland. An open war was carried on by the partisans of the North-West Company for some years against the Hudson's Bay Company. They attacked posts, drove away the inhabitants by force, or waylaid or destroyed them. In 1814 the Red River settlement was the object of attack, and after a war of two years the governor, Mr. Semple, with some others, were massacred, and the survivors were driven away. In 1821 this unfortunate state of things was fortunately put an end to by the union of the rival companies, and the trade has since been prosecuted peacefully and successfully.

To prevent in future the evils of irregular occupation of the Hudson's Bay Company by private adventurers, an act (1 & 2 Geo. IV. c. 66) was passed, the preamble of which recites that the animosities and feuds of the Hudson's Bay and North-West Companies had for many years past kept the interior of North America in a disturbed state, and it was then enacted that it shall be lawful for his majesty to give licence to any company or persons for the exclusive privilege of trading with the Indians in any part of North America, not being part of the territories of the Hudson's Bay Company, or of any of his majesty's provinces, or of territories belonging to the United States. The act then gives to the courts of Upper Canada civil jurisdiction over every part of North America not within the existing British colonies and not subject to any civil government of the United States. Under this act his majesty is enabled to appoint justices of the peace within the territories of the Company, and to give them civil and penal jurisdiction not extending in civil suits beyond 200*l.*, or in penal cases to death or transportation. When the case is met by this limitation, it is reserved for the courts of Western

Upper) Canada. The licences which have been granted in pursuance of this act have been granted to the Hudson's Bay Company. The terms are, that the Company shall provide for the execution of civil and criminal processes over their servants, and that the rules for conducting the Indian trade shall be submitted to the Crown, and be of such a nature as is calculated to diminish or prevent the sale of spirituous liquors to the Indians, and tend to their moral and religious improvement. The Company have established missions and schools in various parts of their territories. The right of the crown to establish any colony within the territories assigned to the Company is reserved, and also the right of annexing any part of such territories to any existing colony.

In the old territories of the Hudson's Bay Company, comprehended under the charter of 1670, the Company are lords of the soil and can sell their lands; but in the parts over which they have acquired jurisdiction at a more recent period they have no power to hold lands.

The posts of the Company stretch from the Frozen Ocean and Hudson's Bay to the Pacific on the west, the Columbia River on the south, and the Atlantic on the east. This vast territory is divided into four districts, the Northern, Southern, Columbian, and Montreal Departments, in which there are 136 establishments. Between the Rocky Mountains and the Pacific there are six permanent establishments on the coasts and sixteen in the interior country; and the Company maintain six armed vessels on the coast, one of which is a steam-vessel. The "posts" are described as stockades with wooden bastions, and they will accommodate thirty or forty persons, but the number of occupants is usually only four or five. The enumeration of the distances between some of these posts will give some idea of the vast extent of country in which the partners and servants of the Hudson's Bay Company carry on their operations. From Fort William on Lake Superior, to Cumberland House on the main branch of the Saskatchewan river, is 1018 miles; from Cumberland House to Fort Chepewyan on Lake Athabasca is 840 miles; thence to Fort Resolution on Great Slave Lake is 240 miles. The Mackenzie river flows out of this lake, and there are three forts on it: the first is Fort Simpson, 338 miles from Fort Resolution; Fort Norman, 236 miles lower down; and Fort Good Hope, 312 miles below Fort Norman, which is the most northerly of the Hudson's Bay Company's forts, is 3800 miles from Montreal. Yet the clerks in charge of these establishments look upon each other as neighbours. Fort Vancouver, about ninety miles from the mouth of the Columbia river, is the largest of the Company's forts. It comprises an area of four acres, a village of sixty houses, stores, mills, and workshops. A farm of 3000 acres forms a part of this establishment. The Company have, in fact, several farms in this quarter, and grain and cattle are raised in large quantities for the use of the Company's servants and the supply of the Russian-American settlements with provisions. Wool, hides, and tallow are exported to England. The terms of their charter do not permit the Hudson's Bay Company to embark their capital in trade, and a subordinate Company has therefore been formed, the members and officers of which belong to the Hudson's Bay Company, while the capital employed is their own. At the colony on the Red River the population exceeds 5000, and there is a Roman Catholic bishop.

The number of persons in the employ of the Hudson's Bay Company in North America, on the 1st of June, 1844, was 1212. In 1837 the Company's service consisted of 25 chief factors, 27 chief traders, 152 clerks, and about 1200 regular servants, besides boatmen and hunters occasionally employed. Many young men of superior education and of respectable family are in the service of the Company. "If they conduct themselves well as clerks, they are promoted and become traders, and afterwards factors. The chief factors and chief traders, as they are called, participate in the profits." (Evidence of Sir J. H. Pelly, Governor of the Hudson's Bay Company.) The administration of the Company has been highly beneficial to the people within its territories. "In all the countries," says Mr. Wyeth, "where the Hudson's Bay Company have exclu-

sive control, they are at peace with the Indians, and the Indians are at peace amongst themselves." (Territory of Oregon Report.)

All the furs collected by the Hudson's Bay Company are shipped to London; some from their factories at York Fort, and on Moose River, in Hudson's Bay; other portions from Montreal, and the remainder from the Columbia River. The furs taken in the whole of the Oregon territory are shipped from the Columbia. In 1844 the Company imported from the whole of their North American territories and hunting-grounds 433,398 skins, of the value of 173,936*l.*; of which Oregon furnished 61,365 skins, valued at 43,571*l.* In 1845 their importations from Oregon have been 57,628 skins, valued at 56,749*l.* (*Edinburgh Review*, No. 165.)

The fur sales of the Hudson's Bay Company are held every year in the month of March, and being of great magnitude, they attract many foreign merchants to London. The purchases of these foreigners are chiefly sent to the great fair in Leipzig, whence the furs are distributed to all parts of the continent of Europe.

The fur trade is prosecuted in the north-western territories of the United States by an association called the North American Fur Company, the principal managers of which reside at New York. The chief station of this company is Michilimackinac, to which are brought all the peltries collected at the other ports of the Mississippi, Missouri, and Yellowstone rivers, and through the great range of country extending thence to the Rocky Mountains. This Company employs steam-boats for ascending the rivers, which penetrate with ease to regions which could formerly be explored only through the most painful exertions in keel-boats and barges, or by small parties on horseback or on foot.

The ermine, called by way of pre-eminence "the precious ermine," is found almost exclusively in the cold regions of Europe and Asia. The stoat (which in fact is identical with the ermine), but the fur of which is greatly inferior to that of the European and Asiatic animal, is found in North America. The fur of the ermine is of a pure whiteness throughout, with the exception of the tip of the tail, which is black; and the spotted appearance of ermine skins, by which they are peculiarly known, is produced by fastening these black tips at intervals on the skins. The animal is from 14 to 16 inches long from the nose to the tip of the tail, the body being from 10 to 12 inches long. The best fur is yielded by the oldest animals. They are taken by snares and in traps, and are sometimes shot, while running, with blunt arrows. The sable is a native of Northern Europe and Siberia. The skins of best quality are procured by the Samoieds, and in Yakutsk, Kamtchatka, and Russian Lapland: those of the darkest colour are the most esteemed. The length of the sable is from 18 to 20 inches. It has been considered by some naturalists a variety of the pine-marten. Martens are found in North America as well as in Northern Asia and the mountains of Kamtchatka: the American skins are generally the least valued, but many among them are rich and of a beautiful dark-brown olive colour. The fiery fox, so called from its brilliant red colour, is taken near the north-eastern coast of Asia, and its fur is much valued, both for its colour and fineness, in that quarter of the world. Nutria skins are obtained from South America, and the greater part of the importations in this country come from the states of the Rio de la Plata. These skins are of recent introduction, having first become an article of commerce in 1810: the fur is chiefly used by hat-manufacturers, as a substitute for beaver. Sea-otter skins were first sought for their fur in the early part of the eighteenth century, when they were brought to Western Europe from the Aleutian and Kurile Islands, where, as well as in Behring's Island, Kamtchatka, and the neighbouring American shores, sea-otters are found in great numbers. The fur of the young animal is of a beautiful brown colour, but when older the colour becomes jet-black. The fur is extremely fine, soft, and close, and bears a silky gloss. Towards the close of the eighteenth century furs had become exceedingly scarce in Siberia, and it became necessary to look to fresh sources

for the supply of China and other Asiatic countries. It was about the year 1780 that sea-otter skins were first carried to China, where they realised such high prices as greatly to stimulate the search for them. With this view several expeditions were made from the United States and from England to the northern islands of the Pacific and to Nootka Sound, as well as to the north-west coast of America. The Russians then held and still hold the tract of country most favourable for this purpose, but the trading ships which frequent the coast are enabled to procure these skins from the Indians. Fur-seals are found in great numbers in the colder latitudes of the southern hemisphere. South Georgia, in 55° S. lat., was explored by Captain Cook in 1771, and immediately thereafter was resorted to by the colonists of British America, who conveyed great numbers of seal skins thence to China, where very high prices were obtained. The South Shetland Islands, in 63° S. lat., were greatly resorted to by seals, and soon after the discovery of these islands in 1818, great numbers were taken: in 1821 and 1822 the number of seal skins taken on these islands alone amounted to 820,000. Owing to the system of extermination pursued by the hunters, these animals are now almost extinct in all these islands, and the trade for a time at least has ceased. The seal-fishery, or hunting, in the Lobos Islands, is placed under restrictive regulations by the government of Montevideo, and by this means the supply of animals upon them is kept pretty regular.

Bears of various kinds and colours, many varieties of foxes, beavers, racoons, badgers, minks, lynxes, musk-rats, rabbits, hares, and squirrels, are procured in North America. Of all the American varieties, the fur of the black fox, sometimes called the silver fox, is the most valuable; next to that in value is the fur of the red fox, which is exported to China, where it is used for trimmings, linings, and robes, which are ornamented in spots or waves with the black fur of the paws of the same animal. The fur of the silver-fox is also highly esteemed. This is a scarce animal, inhabiting the woody country below the falls of the Columbia river. It has long thick fur of a deep lead colour, intermingled with long hairs white at the top, forming a lustrous silver-grey, whence the animal derives its name. The hides of bisons (improperly called buffaloes), of the sheep of the Rocky Mountains, and of various kinds of deer, form part of the fur trade of North America; and sometimes the skin of the white Arctic fox and of the Polar bear are found in the packs brought to the European traders by the most northern tribes of Indians.

There is but one species of fur which is peculiar to England, the silver-tipped rabbit of Lincolnshire. The colour of the fur is grey of different shades, mixed with longer hairs tipped with white. This fur is but little used in England, but meets a ready sale in Russia and China; the dark-coloured skins are preferred in the former country, and the lighter-coloured in China.

The number of skins imported into this country in 1843 was as follows:—

	Imported. No.	Home Consumption. No.
Bear . . .	11,640	1,235
Beaver . .	49,688	52,048
Cat . . .	5,430	1,992
Coney . .	60,655	63,279
Deer . . .	175,804	79,267
Ermine . .	105,847	89,073
Fitch . .	174,308	173,445
Fox . . .	80,927	4,120
Goat . . .	512,287	337,068
Kid, in the hair .	92,716	54,744
—— dressed .	446,372	444,071
Lamb, undressed .	1,288,902	1,332,400
—— tanned, &c.	10,391	7,348
Lynx . .	9,853	6,273
Marten . .	208,881	182,515
Mink . .	139,156	88,934
Musquash . .	865,337	1,045,713
Nutria . .	836,725	560,046
Otter . .	17,825	145
Racoon . .	381,049	57,556
Sheep . .	421,390	348,809
Squirrel or Calabar	1,987,965	1,872,594
Seal . . .	772,695	771,388

HUE AND CRY was the old common-law process of pursuing with horn and voice all felons and such as had dangerously wounded another.

Though the term has in a great measure fallen into disuse, the process is still recognised by the law of England as a means of arresting felons without the warrant of a justice of the peace. Hue and cry may be raised either by the precept of a justice of the peace, or by a private person who knows of the felony; who should acquaint the constable of the vill with the circumstances and the person of the felon: though, if the constable is absent, hue and cry may be made without licence. When hue and cry is raised, all persons, as well constables as others, are bound to join in the pursuit and assist in the capture of the felon. A constable also who has a warrant against a felon may follow him by hue and cry into a different county from that in which the warrant was granted, without having the warrant backed. The pursuers are justified in breaking the outer door of the house where the offender actually is, and are not liable to any punishment or suit if it should appear that the hue and cry was improperly raised, but the person raising the hue and cry wantonly and maliciously may be severely punished as a disturber of the public peace. (Blackstone, *Com.*; Stephens, *Criminal Law.*)

A printed sheet called the 'Hue and Cry' is issued three times a week from the Police Court, Bow-street, which contains descriptions of property stolen, notices of robberies, and descriptions of soldiers who have deserted. Copies of this paper are sent to the police offices throughout the country. The 'Hue and Cry' is published at the expense of the Home Office, and costs about 1200*l.* a year.

HUNDRED. [SHIRE.]

HUNDRED COURT. [COURTS; SHIRE.]

HUSBAND. [WIFE.]

HYPOTHECATION. [MORTGAGE; PLEDGE.]

I.

IDIOT. [LUNATIC.]

IGNORAMUS. [INDICTMENT.]

ILLEGAL CONTRACT. [PUBLIC POLICY.]

ILLEGITIMACY [BASTARD.]

IMPEACHMENT. [ATTAINDER.]

IMPERIAL CHAMBER. [AULIC CHAMBER.]

IMPORTS AND EXPORTS. [BALANCE OF TRADE; DEMAND AND SUPPLY.]

IMPRESSMENT. [SEAMEN.]

IMPROPRIATE RECTORY. [BENEFICE, p. 341.]

IMPROPRIATION. [BENEFICE.]

IMPROPRIETOR. [BENEFICE, p. 342.]

INCLOSURE. The term Inclosure is applied to the inclosing and partitioning of lands in England and Wales, which are comprehended under the general name of Commons or Common Lands. A knowledge of the present condition of the lands comprehended under this term enables us to form a better estimate of the state of agriculture in England and its capabilities of improvement. We thus learn also what was the general condition of the lands in England before inclosures were made.

It is necessary to define the terms Commons, and Commonable and Intermixed Lands. Commons or Common Lands are lands in a state of nature or waste, of which individuals have not the severalty. Commonable Lands are those lands which during a part of the year are in severalty, that is, occupied severally by individuals as their own, to the exclusion for the time of other people. The amount of common land in England is not known, but it is conjectured that it may be about 8,000,000 of acres: the total area of England and Wales is supposed to be about 37,000,000 acres.

The amount of commonable and intermixed lands is not known. The nature of these commonable and intermixed lands may be collected from the following instances. "There are many parishes in the kingdom that consist altogether of intermixed or commonable lands; there are others in which there is a great intermixture of common land with the commonable and intermixed land. The township of Barmby on the Marsh in Yorkshire contains 1692 acres. There are 1152 pieces of open land, which contain 1015 acres, giving an average size of 3 roods and 23 perches, and there are

352 old inclosures containing 677 acres. In the parish of Cholsey in Berkshire, the total contents of which are 2381 acres, there are 2315 pieces of open land, which contain 2327 acres, giving an average rize of one acre." This open land generally consists of long strips which are so narrow that it is impossible to plough them across. Yet much of this land is the best in the kingdom for natural fertility, and is the oldest cultivated land.

There is great variety in these commonable lands; but they may be divided into three classes, exclusive of wood-lands, First, there is open arable and meadow land, which is held and occupied by individuals severally until the crop has been got in. After the crop has been removed, that is, during the autumn and winter, it becomes commonable to persons who have severalty rights in it, and they turn on to it their cattle without any limit, or without stint, as it is termed. Thus there is a divided use in these open lands: individuals have the exclusive right to the enjoyment of one or more of these strips of open land for a part of the year; and during another part of the year all these individuals enjoy this open land in common. Second, there is open arable and meadow land that is held in severalty during one part of the year, like the first class; but after the crop is removed, it is commonable not only to parties who have severalty rights, but to other classes of individuals: these lands are generally called Lammas Lands.

These commonable rights may belong to a particular class, as a body of freemen, or to all landholders. There is great variety in these two classes as to the severalty holdings also. "There are many cases in which the severalty holding varies year by year. There are in these open lands what is called a pane of land, in which there may be 40 or 60 different lots. It is reported to be a remnant of an old military custom, when on a certain day the best man of the parish appeared to take possession of any lot that he thought fit; if his right was called in question, he had to fight for it, and the survivor took the first lot, and so they went on through the parish. It often happens that in these shifting severalties the occupier of lot one this year goes round the whole of the several lots in rotation; the owner of lot one this year has lot two the next, and so on. When these lands are arable lands, they do not change annually, but periodically, according to the rotation of the crops. Then there is the old lot meadow, in which the owners draw lots for the choice. There are a great variety of circumstances under which the severalty ownership of these lands shifts from time to time—but after the severalty ownership has ceased, and after the crop has been removed, they all become commonable."

This is one among many instances of the existence of antient usages in England, which are the same or nearly the same as the usages of nations that we call barbarous. Tacitus (*Germania*, c. 26) says of the antient German mode of agriculture: "The lands, in proportion to the number of cultivators, are occupied by all in turns, which presently they divide among themselves according to their rank (merit). The extensive plains offer facility for division. They change the cultivated fields yearly; and there is still a superfluity of land." The meaning of Tacitus is not clear. The following passage in Cæsar's account of the Gauls (vi. 22) is more distinct: "They pay no attention to agriculture, nor has any man a fixed quantity of land and boundaries of property: but the magistrates annually assign to the clans and tribes who have come together, as much land as they please and where they please, and in the next year they compel them to move to another spot." Herodotus (ii. 168) says that each member of the military caste in Egypt had a certain portion of land assigned to him; but they enjoyed the lands in a rotation, and the same persons did not continue in the enjoyment of the same lands. Strabo (p. 315) mentions a custom amongst the Dalmatians of making a division of their lands every eight years.

"The third class is that of grazing lands, where the rights of parties are settled and defined, the ordinary stinted pasture. The commonable lands are subject to very great variety and peculiarity; for instance, in some of these lands the right of grazing sheep at all belongs to a

man called a flock-master, and he has the power, during certain months of the year, of turning his own sheep exclusively on all the lands of the parish; or, according to particular circumstances, his right is limited and restricted to turning sheep upon a certain portion of it, with a view to giving parties an opportunity of putting in a wheat crop. In those parishes where there is a flock-master who has a right of depasturing his sheep during a certain portion of the year over all the land of the parish, it is clear that no one can sow any wheat without having made a bargain with him for shutting up his own particular fields, or some proportion of them."

"There is a very large extent of woodland in this kingdom that is commonable, strange to say, where certain individuals have a right during the whole year to turn on stock, the owner of the wood having no means of preserving his property except by shutting out other commoners' stock by custom for some two or three years after felling. There is that right, as also the old right of estover, which is a very great inconvenience, viz. where parties have the right of cutting house-bote, and plough-bote, and fire-bote, and so on in woods belonging, *quâ* wood, to another party. There is a great deal of land subject to that ruinous custom. There are many varieties of these commonable lands, but these are the most prominent and remarkable of them."

Under such a system as this, it is obvious that these common fields must be ill cultivated. The intermixed lands cannot be treated according to the improved rules of good husbandry. It is stated that the simple re-distribution of intermixed lands, now held in parcels so inconvenient in form and size as to be incapable of good husbandry, would in many instances raise the fee-simple value of the lands from 15*s*. or 17*s*. an acre to 30*s*.

It is the opinion of witnesses examined before the parliamentary committee of 1844, on Commons' Inclosures, that judicious inclosure would make a large portion of common lands much more productive. At present open arable lands are so intermixed that effectual drainage is nearly impossible. One witness says: "I have had occasion to go over two small properties, about 150 acres each; one I found in 301 different pieces, and the other in a little more than a hundred. I mention this to show how the lands are frequently intermixed; they are therefore farmed at much greater expense; and it is impossible to drain them on the present improved mode of drainage, inasmuch as other parties are occupying the furrow by which the water should pass off." In the Midland counties, where there are these open arable fields, the course is two crops and a fallow, and every third year the flocks run over the whole field. The same witness considers that a fourth of all the open arable land is at present totally unproductive. In cases where common arable fields have been subdivided and allotted, "the great improvement is, that in the first place every man has his allotment, and he deals with it as he pleases; he drains it, and crops it upon a proper course of cropping; he puts it in seed and keeps sheep upon it; he grows turnips and clover, or whatever he thinks proper." The same witness is of opinion that the average improvement in the value of common fields which have been inclosed is not less than 25 per cent. Indeed, the evidence that was produced before the committee establishes to a degree beyond what otherwise would be credible, the immense inconvenience and loss which arise from the system of intermixed lands, and their being also subject to commonage.

As to Common Rights, that is, rights of pasture and so forth on commons or waste lands, they are described generally under COMMON, RIGHTS OF. As to the common pasture lands, they also require an improved management. It is stated that commons are generally overstocked, partly in consequence of persons turning out more stock than they have a right to do, and partly by persons putting their stock on the common who have no right. In consequence of commons being overstocked, they are profitable to nobody; and a rule for regulating the quantity of stock would therefore be beneficial to all persons who are entitled to this right of common. Violent disputes

also frequently arise in consequence of the rights of parties to commonage not being well defined. It is the opinion of competent judges that very great advantage would result from stinting those parts of commons that are not worth inclosure; and that "it would be in many instances highly desirable to inclose portions of a common for the purpose of cultivation, and to allot such portions of it, whilst it would be impolitic to do more than stint other portions of it." A *stint* may be defined to be "the right of pasturage for one animal, or for a certain number of animals, according to age, size, and capability of eating." The commons in fact are not now stinted by the levant and couchant right, a right which cannot be brought into practical operation; and besides this there are many commons in gross. [COMMON, RIGHTS OF.]

Inclosures of land have now been going on for many years. It is stated that since 1800 about 2000 inclosure acts have passed; and prior to that time about 1600 or 1700. It seems doubtful from the evidence whether the 1600 or 1700 comprehend all inclosure acts passed before 1800. These inclosure acts (with the exceptions which will presently be mentioned) are private acts, and the expense of obtaining them and the trouble attendant on the carrying their provisions into effect have often prevented the inclosure of commons.

In 1836 an act (6 & 7 Wm. IV. c. 115) was passed for facilitating the inclosure of open and arable fields in England and Wales. The preamble to the Act is as follows:—"Whereas there are in many parishes, townships, and places in England and Wales divers open and common arable, meadow, and pasture lands and fields, and the lands of the several proprietors of the same are frequently very much intermixed and dispersed, and it would tend to the improved cultivation and occupation of all the aforesaid lands, &c., and be otherwise advantageous to the proprietors thereof, and persons interested therein, if they were enabled by a general law to divide and inclose the same," &c. Inclosures have been made under the provisions of this act, but the powers which it gives are limited, for the "act applies solely to lands held in severalty during some proportion of the year, with this exception, that slips and balks intervening between the cultivated lands may be inclosed." The lands which cannot be inclosed under the provisions of this act are "the uncultivated lands, the lands in a state of nature, intervening between these cultivated lands, beyond those that are fairly to be considered as slips and balks." However, it was stated in evidence before the committee of the House of Commons in 1844, that a large extent of common and waste land has been illegally inclosed under the provisions of the act, and the persons who hold such lands have no legal title, and can only obtain one by lapse of time. The chief motive to this dealing with commons appears to have been, that they thus got the inclosure done cheaper than by applying to Parliament for a private act.

In 1844 a select committee of the House of Commons was appointed "to inquire into the expediency of facilitating the inclosure and improvement of commons and lands held in common, the exchange of lands, and the division of intermixed lands, and into the best means of providing for the same, and to report their opinion to the House." The committee made their report in favour of a general inclosure act, after receiving a large amount of evidence from persons who are well acquainted with the subject. The extracts that have been given in this article are from the printed evidence that was taken before the select committee.

In pursuance of the recommendation of the committee, an Act of Parliament was passed in 1845 (8 & 9 Vict. c. 118), the object of which is thus stated in the preamble: "Whereas it is expedient to facilitate the inclosure and improvement of commons and other lands now subject to the rights of property which obstruct cultivation and the productive employment of labour, and to facilitate such exchanges of lands, and such divisions of lands intermixed or divided into inconvenient parcels, as may be beneficial to the respective owners; and it is also expedient to provide remedies for the defective or incomplete execution and for the non-execution

of powers created by general and local acts of inclosure, and to authorize the renewal of such powers in certain cases," &c.

It is not within the scope of this article to attempt to give any account of the provisions contained in the 160 sections of this act; but a few provisions will be noticed that are important in an economical and political point of view.

The 11th section contains a comprehensive description of lands which may be inclosed under the act; but the New Forest and the Forest of Dean are entirely excepted. The 14th section provides that no lands situated within fifteen miles of the city of London, or within certain distances of other towns, which distances vary according to the population, shall be subject to be inclosed under the provisions of this act without the previous authority of parliament in each particular case. The 15th section provides against inclosing town greens or village greens, and contains other regulations as to them. The 30th section provides that an allotment for the purposes of exercise and recreation for the inhabitants of a neighbourhood may be required by the commissioners under the act, as one of the terms and conditions of an inclosure of such lands as are mentioned in § 30.

The 108th section makes regulations as to "the allotment which upon any inclosure under this act shall be made for the labouring poor," and (sect. 109) "the allotment wardens (appointed by sect. 108) shall from time to time let the allotments under their management in gardens not exceeding a quarter of an acre each, to such poor inhabitants of the parish for one year, or from year to year, at such rents payable at such times and on such terms and conditions not inconsistent with the provisions of this act, as they shall think fit." Section 112 provides for the application of the rents of allotments; the residue of which, if any, after the payments mentioned in this section have been defrayed, is to be paid to the overseers of the poor in aid of the poor-rates of the parish.

Sections (147, 148) provide for the exchanges of lands not subject to be included under this act, or subject to be inclosed, as to which no proceedings for an inclosure shall be pending, and for the division of intermixed lands under the same circumstances.

Under section 152 the commissioners are empowered to remedy defects and omissions in awards under any local act of inclosure, or under the 6 & 7 Wm. IV. c. 115; and under section 157, the commissioners may confirm awards or agreements made under the supposed authority of 6 & 7 Wm. IV. c. 115, if the lands which have been illegally inclosed or apportioned or allotted, shall be within the definition of lands subject to be inclosed under this act.

The provisions of this act seem to be well adapted to remedy the evils that are stated in the evidence before the select committee; and there can be no doubt that agriculture will be greatly improved, the productiveness of the land increased, and employment given to labour by this judicious and important act of legislation. The 'London Gazette,' of August 22nd, 1845, notified the appointment by the secretary of state of two Commissioners of Inclosures.

(*Report from the Select Committee on Commons' Inclosure, together with the Minutes of Evidence and Index.* The Report is accompanied with Maps which explain various parts of the evidence. A complete digest of these minutes of evidence would form a very instructive article on the state of agriculture in England. The little that has been here attempted is of necessity very incomplete. The witnesses appear to agree in the main, but there are some differences of opinion which a reader of the minutes will not fail to see.)

INCOME TAX. [TAXATION.]

INCUMBENT. [BENEFICE.]

INDENTURE. [DEED.]

INDIA LAW COMMISSION. The act of the 3 & 4 Wm. IV. c. 85, by which the privileges of the East India Company are regulated, provides for the establishment of a Law Commission in India. The 53rd section recites that it is expedient, subject to such special arrangements as local circumstances may require, that a general system of judicial establishments and police, to which all persons whatever, as well Europeans as natives,

may be subject, should be established in the East Indies, and that such laws as may be applicable in common to all classes of the inhabitants, having a due regard to the rights, feelings, and peculiar usages of the people, should be enacted, and that the laws, and customs having the force of laws, should be ascertained and consolidated. For this purpose the appointment of a commission of five members was authorised, to be called "The Indian Law Commissioners." They were to report from time to time, and to suggest such alterations as they should consider could be beneficially made in the courts of justice and police establishments, in the forms of judicial procedure and laws, due regard being had to the distinction of castes, difference of religion, and manners and opinions prevailing among different races, and in different parts of India. By subjecting the European population of India to the same system of laws as the native population, the influence of the opinion of the former in the administration of justice will prevent abuses to which the latter might be exposed without having the opportunity of urging their complaints in this country. Mr. T. B. Macaulay was the chief member of the first commission. The report of a penal code was presented to the Governor-General on the 15th of June, 1835. The ground-work of it is not taken from any system of law in force in India, though compared with and corrected by the practices of the country. The principles of the British law, the French code, and the code drawn up by Mr. Livingston for the State of Louisiana, are the foundations of it. Most of the articles which it contains are accompanied with illustrations to facilitate the application of the law, and it is thus a statute-book and a collection of decided cases. This report was signed by Messrs. Macaulay, J. M. Macleod, G. W. Anderson, and F. Millett. The progress of the present commissioners in dealing with the general law of India has not been published. (*Penal Code, Parliamentary Paper*, 1838, No. 673.)

INDICTMENT. In its Latinized form this word is Indictamentum, which is probably from "indicare," to indicate or exhibit. An indictment is defined by Blackstone to be "a written accusation of one or more persons, of a crime or a misdemeanor, preferred to and presented upon oath by a grand jury." [JURY.] The accusation is at the suit, that is, in the name and on the behalf of the crown. The grand jury are instructed in the articles of their inquiry by a charge from the presiding judge, and then withdraw to sit and receive bills of accusation, which are presented to them in the name of the crown, but at the suit of any private person. An indictment is not properly so called till it has been found to be a true bill by the grand jury: when presented to the grand jury it is properly called a bill. The decision of the grand jury is not a verdict upon the guilt of the accused, but merely the expression of their opinion that from the case made by the prosecutor the matter is fit to be presented to the common jury, and therefore in conducting the inquiry the evidence in support of the accusation only is heard. If the grand jury think the accusation groundless, they indorse upon the bill "not a true bill," or "not found;" if the contrary, "a true bill;" and in finding a true bill twelve at least of the grand jury must concur. Antiently the words "ignoramus" and "billa vera" were used for the like purposes. When a bill is found to be a true bill, the trial of the accused takes place in the usual form; and when the bill is found not to be true, or, as it is frequently called, "ignored," the accused is discharged, but a new bill may be preferred against him before the same or another grand jury. Sometimes, when the bill is ignored on account of some slip or error, the judge will direct the accused to be kept in custody. in order to prevent him from escaping from justice. An indictment may be exhibited at any time after an offence is committed, except in those cases where a time is limited by statute. (4 Blackstone, *Com.*)

INDORSEE, INDORSEMENT, INDORSER. [EXCHANGE, BILL OF.]

INDUCTION. [BENEFICE, p. 340.]

INFAMY (from the Roman infamia) in English law is not easily defined. Certain offences were formerly con-

sidered such that conviction and judgment for such offences rendered a man infamous and incompetent to be a witness. But the endurance of the punishment, pardon, or reversal of the judgment, restored a man's competency as a witness. The 9 Geo. IV. c. 23, § 3, enacts, that when a man convicted of a felony shall have undergone the legal punishment for it, the effect shall be the same as a pardon under the Great Seal; and (§ 4) no misdemeanour, except perjury or subornation of perjury, shall render a man an incompetent witness after he has undergone his punishment. The 6 & 7 Vict. c. 85, enacts that no man shall be excluded from giving evidence, though he may have been convicted of any crime or offence. [EVIDENCE, p. 860.]

Certain offences enumerated in the 7 & 8 Geo. IV. c. 29, § 9, are infamous crimes, with reference to the provisions of that act. Though infamy does not disqualify a man from being a witness, it may be urged as an argument against his credibility.

The only satisfactory definition of infamy would be a permanent legal incapacity to which a man is subjected in consequence of a conviction and judgment for an offence, and which is not removed by suffering the punishment for the offence. By 2 Geo. II. c. 24, § 6, persons who are legally convicted of perjury or subornation of perjury, or of taking and asking any bribe, are for ever incapacitated from voting at the elections of members of parliament. They are therefore infamous; they labour under infamy: and have lost part of their political rights.

The Roman term infamia is the origin of our term infamy. Infamia followed in some cases upon condemnation for certain offences in a judicium publicum; and in other cases it was a direct consequence of an act, as soon as such act became notorious. Among the cases in which infamia followed upon condemnation were, insolvency, when a man's goods were taken possession of by his creditors in legal form and sold; the actio furti, and vi bonorum raptorum; actio fiduciae, pro socio, tutelae, &c. In all these cases a judicial sentence, or something analogous to it, was necessary, before infamia could attach to a person. Among the cases in which infamia followed as an immediate consequence of acts which were notorious are the following: the case of a woman caught in adultery, of a man being at the same time in the relation of a double marriage, of prostitution in the case of a woman, or when a man or woman gained a living by aiding in prostitution. The consequence of infamia was incapacity to obtain the honours of the state, and probably the loss of the suffrage also; and it was perpetual. The infamis was still a citizen (civis), but he had lost his political rights. The infamous man was also under some disabilities as to his so-called private rights. He was limited by the Praetor's edict in his capacity to postulate (that is, take the initial measures for asserting or defending his rights in legal form), to act as the attorney of another in such cases, to be a witness, and to contract marriage.

The rules of Roman law as to infamia are chiefly contained in the *Digest*, iii tit. 1 and 2. (See Savigny, *System des heut. Röm. Rechts*, ii. § 76-83; Becker, *Handbuch der Röm. Alterthümer*, ii. 121; Puchta, *Institutionen*, ii. 441.)

INFANT. [AGE.]

INFANT HEIR. [DESCENT.]

INFANTICIDE. The practice of putting infants to death, or exposing them, has existed in many countries from the remotest periods on record. Both in the Grecian states and among the Romans the exposure of infants was a common practice; and it does not appear that it was punished by any legal penalty. The difficulty of maintaining children must always have been one motive for infanticide, or the exposure of children. Aristotle (*Politica*, vii. 16, ed. Bekker) proposes the following regulation:—"With respect to the exposure and nurture of infants, let it be a law that no infant shall be brought up which is imperfectly formed; but with respect to the number of children, if the positive morality do not permit it, let it be a law that no child that is born be exposed; for indeed the limit to procreation has been determined. But if any children should be born in consequence of cohabitation contrary to these rules, abortion should be

procured before the fœtus has perception and life, for that which is right and that which is not will be determined by perception and life." This is perhaps the meaning of the passage in Aristotle; but it is not free from difficulty, and it has been variously explained; but so much is certain, that he recommends the procuring of abortion in certain cases. Plato, in his 'Republic' (v. p. 25) recommends exposure of the infants of the poor, and imperfectly formed children: he also recommends abortion. It does not appear that any legal check was put on the practice of exposing children among the Romans till the time of Valentinian and his colleagues (*Cod.*, viii. tit. 51 (52), § 2); though the enactment of Valentinian refers to an existing penalty, and the penalty is not mentioned in the title here referred to. It is a disputed point whether the doctrine of Paulus (*Dig.* 25, tit. 3, "De Agnoscendis et alendis liberis," &c. § 4) is to be considered a moral precept or a law (Gibbon, *Decline and Fall*, ch. xliv. note 114). Paulus says, "It is the opinion (or my opinion, "videtur") that a man must be considered as causing death, not only if he suffocates an infant, but if he casts the infant away, or refuses it food, or exposes it in public places to obtain that compassion which he himself has not." This seems to imply that the legal conclusion was, that any of these acts was equivalent to killing a child. Now, though exposure of infants was common among the Romans, and for a long time was not punished, it cannot be inferred that direct means of depriving an infant of life were not punished, at least in the time of Paulus. The judgment of Paulus therefore would make child-exposure a punishable offence. The adoption of this maxim into the legislation of Justinian must be considered as giving to it the efficacy of a law. On the subject of child-murder among the Romans, see Rein, *Criminalrecht der Römer*, p. 439, and the modern writers referred to in his note.

In modern times, the practice is permitted in many countries. In China, or at least in some parts of the empire, a large proportion of the female population are put to death as soon as they are born. Among the Hindus it was practised to a very great extent, till the Marquis Wellesley, when appointed Governor-General of India, used every possible exertion to put a stop to it. By the perseverance of Major Walker and others his endeavours were successful, though unhappily for only a short time, for Bishop Heber observes that "since that time things have gone on very much in the old train, and the answer made by the chiefs to any remonstrances of the British officers is, 'Pay our daughters' marriage portions, and they shall live'" (*Narrative of a Journey in Upper India*, and *Hindu Infanticide*, by E. Moor, F.R.S., 1811; including Walker's *Report*). Of the island of Ceylon, Heber also remarks that in 1821 "the number of males exceeded that of females by 20,000; in one district there were to every hundred men only fifty-five women, and in those parts where the numbers were equal the population was almost exclusively Mussulman." Here also, as in Hindustan, the difficulty and expense of educating female children, and the small probability of their marrying without some portion, while a single life is deemed disgraceful, are the motives leading to the perpetration of the crime. Among the Mohammedans the practice is not discountenanced, though the necessity for it is greatly lessened by the habit of producing abortion. In the numerous islands of the Pacific, infanticide is practised to such an extent, that some of them have at times, when pestilence has contributed its influence, been nearly depopulated. When Cook visited Otaheite, he found its population to be upwards of 200,000; but in the early part of this century it was reduced to between 5000 and 6000, and this principally from the practice of murdering their offspring. Mr. Ellis (*Polynesian Researches*) says that he does "not recollect having met with a female in the island, during the whole period of his residence there, who had been a mother, while idolatry prevailed, who had not imbrued her hands in the blood of her offspring." One of the consequences of the introduction of Christianity and civilization into heathen countries has been the decrease or cessation of this abominable custom.

Infanticide is common among the na-

tive tribes of Brazil. (*London Geog. Journal*, ii. 198.)

In Christian countries, although infanticide is regarded with the deepest abhorrence, and is visited with the extreme severity of the law, the expense and trouble of maintenance, and the fear of shame and loss of reputation, are motives sufficiently powerful for the occasional perpetration of the crime.

It is one of the most difficult questions of medical jurisprudence to establish the murder of a child lately born. The chief points for decision are,—1st, whether the infant, the subject of inquiry, was born dead or alive; and 2nd, whether its death was the result of violence or of natural causes.

To establish the former point it is necessary to prove, first, that the infant was not born before the end of the sixth month after conception, because before that time a fœtus cannot be deemed capable of maintaining an independent existence, or to be what is called *viable*. This being proved from the size and form of the child, the decision whether it was born alive or not must generally rest on the condition of the lungs and heart, in which certain remarkable changes are produced as soon as respiration in the air has commenced. The result of many experiments has established certain rules by which the fact of the child having breathed after birth can in general be ascertained. In more difficult cases the weight of the lungs and their specific gravity require to be examined.

The signs of a child having lived after birth, which are to be found in the heart and other parts, supply no positive information unless life has continued for at least a day, and then the lungs alone will always suffice for decision. We need not consider the evidence required to prove whether a child born alive was murdered or died from natural causes, for it must be similar in all respects to that which is necessary in cases of homicide.

If the result of the evidence be that the child was born alive, and that it was destroyed, the offence is murder, and punishable accordingly.

If a woman be quick with child (that is, if she has felt the child move within her), it is murder if she take, or any person administer to her, or use any means with intent to procure abortion. But in cases where the woman is not quick with child, the offence is punishable at the discretion of the court by transportation for any term not exceeding fourteen or less than seven years, or imprisonment with or without hard labour for any term not exceeding three years; and if the offender be a male, he is to be once, twice, or thrice publicly or privately whipped (if the court shall think fit), under 9 George IV. c. 31. But this statute has been amended, and an attempt to procure abortion is now punishable, under 1 Vict. c. 85, with transportation for life or any term not less than fifteen years, or imprisonment for a term not exceeding three years.

The murder of bastard children by the mother was considered a crime so difficult to be proved, that the statute 21 James I. c. 27, made the concealment of the death of a bastard child absolute evidence that it had been murdered by the mother, except she could prove, by one witness at least, that it had been actually born dead. This law was repealed by the 43 George III. c. 58; and this act also was repealed by the statute 9 George IV. c. 31. It is enacted by § 14 of this last act that if "any woman" be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a misdemeanour, and shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and it shall not be necessary to prove whether the child died before or after birth: provided that if any woman tried for the murder of her child be acquitted thereof, it shall be lawful for the jury to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

A like act (10 Geo. IV. c. 34, § 97), applies to Ireland.

There are institutions in this country, as well as many other European countries, which have been founded with the view of restraining infanticide, of which an account is given in the article FOUNDLING HOSPITALS.

The legislative provisions for the prevention of infanticide, and the existing laws upon the subject, which have been established in most of the countries of which we have any knowledge, are clearly and concisely stated in Dunlop's edition of Beck's 'Elements of Medical Jurisprudence,' pp. 185-194.

In the five years from 1835 to 1839, the total number of persons committed for trial or bailed in England and Wales for "concealing the birth of infants," was 224; and in the five years from 1840 to 1844 the number was 306. In 1844, the number was 87, which was considerably higher than the average.

In the ten years from 1835 to 1844 inclusive, the number of persons tried for "attempts to procure the miscarriage of women" increased from 21 in the first five years to 31 in the last five years. This offence is much more common than the numbers here mentioned would lead any one to suppose.

In the three years 1838-9-40 the number of children murdered under the age of one year was 76; and of these there were 14 in the metropolis; 20 in Wilts, Dorset, Devon, and Somerset; 5 in Cheshire and Lancashire; 10 in Sussex, Hants, Berks, and parts of Kent and Surrey not included in the metropolitan district. Out of the above number (76) the number of "infants" was 61.

The number of infants murdered in 1840 was 18, 5 of whom were illegitimate.

In Scotland the crime of infanticide is called child-murder. If a child be destroyed in the womb, it is the separate offence of procuring an abortion. It is not under statutory regulations, but may be the subject of accusation, trial, and proof according to the rules of practice and evidence applicable to any other kind of murder. "Concealment of pregnancy" has been, since the 49 Geo. III. c. 14, a separate offence, for which a person may be brought to trial; and not an alternative which the jury may find in a charge of infanticide. The punishment is imprisonment not exceeding a term of two years.

INFANTRY is a name given to the soldiers who serve on foot. It is immediately derived from the Italian word *fante*, which, though in strictness denoting a child, is in general applied to any young person. From the latter word comes *fantaccino*, and this is the origin of *fantassin*, a name which was once commonly applied to a foot soldier. During the time that the feudal system was in vigour, the numerous dependants of the nobility served in the wars, for the most part, on foot; and being called children, because they were so considered with respect to their patron lords, or to the towns from whence they were drawn, the word infantry became at length the general name for that species of troops. Boccaccio, who wrote in the fourteenth century, designates by the word *fanteria* the men who marched on foot in rear of the cavalry.

Among the antient nations of Europe the foot soldiers constituted the chief strength of the armies. In the best days of the Grecian and Roman states battles were mainly won by the force and discipline of the phalanges and legions, and the number of the infantry in the field far exceeded that of the cavalry. The cavalry were then, as at present, employed chiefly in protecting the wings of the army and in completing the victory which had been gained by the former. Most of the writers on tactics, from Folard downwards, express a decided preference in favour of the infantry.

The antient Franks, when they left the forests of Germany, were accustomed to march and fight on foot; and they persevered in this practice even after they had obtained possession of the country of the Gauls, which abounded with horses.

In this country the greater part of the Anglo-Saxon forces consisted of infantry, the cavalry being formed of the thanes, or rich proprietors of the land: the infantry were divided into heavy and light armed troops; the former being provided with swords and spears and large oval shields, and the latter having only spears, clubs, or battle-axes.

But soon after the time of Charlemagne the institutions of chivalry began to be generally adopted in the kingdoms of Europe These led to frequent and splendid exhibitions of martial exercises on horseback, in presence of the princes and assembled nobles; and the interest inspired by the achievements of the knights on those occasions was naturally followed by a high regard for that order of men. By degrees the cavalry, which was composed of persons possessing rank and property, and completely armed, acquired the reputation of being the principal force in war; and the foot soldiers, ill armed and disciplined, were held in comparatively small estimation.

From the capitularies of the French kings of the second race it appears that the foot soldiers who served in the armies of France consisted of slaves and freed serfs: the latter were either peasants or artificers, who, for the benefit of the army, occasionally exercised their particular trades, as shoeing horses, forming intrenchments, &c.; and, in action, like the men of the inferior class, were employed as skirmishers or light-armed troops. Similarly the infantry of this country, for some time after the Conquest, consisted of the yeomanry, vassals and dependants of the feudal tenants; and occasionally foot soldiers were engaged by the kings, under indentures, to serve in the wars. The English troops at that time wore a plain iron helmet called a *bacinet*, and a linen doublet stuffed with wool or cotton; their arms were generally pikes, but frequently they had swords and battle-axes.

Under the third race of kings in France, the possessors of fiefs were not compelled to furnish infantry for the armies; and it appears that this duty was then imposed on the towns. The troops thus raised were obliged to serve only in or near the towns to which they belonged; or, if they were marched to a considerable distance from thence, they received pay. In the reign of Philip Augustus this militia must have been very numerous; for in some districts it was formed into legions, and was commanded by persons of distinction. At the battle of Bovines (1214) the municipal militia formed the first line of the French army, but it was defeated by the German infantry, which was more numerous, and even then of better quality than that of France.

In 1448 Charles VII. instituted the militia denominated *Francs Archers*, which consisted of 16,000 foot soldiers armed with bows. But this body existed only about forty years, when it was suppressed by Louis XI., who formed a standing army of 10,000 French infantry, to which were joined 6000 Swiss; and subsequently Charles VIII. added a large body of Lansquenets, or German infantry. The reputation of the native troops in France seems to have been then at a low ebb; for Brantôme, in his *Discours des Colonels*, describes them as being mostly the refuse of society—men with matted hair and beards, who for their crimes had had their shoulders branded and their ears cut off. On the other hand the Swiss soldiers were inured to discipline; they were protected by defensive armour and formed into deep battalions, in which state they were able to render the shock of cavalry entirely unavailing. Large divisions of these troops accompanied the army of Charles VIII. into Italy, in 1494, where their good conduct and discipline greatly contributed to raise the reputation of the infantry to its antient standard.

The superiority of this class of troops consists in their being able to act on ground where cavalry cannot move; and it is obvious that the latter must, at all times, have been nearly useless in the attack and defence of fortified castles or towns. Even when the cavalry were held in the highest estimation it was sometimes found convenient for the knights to dismount and act as infantry. Froissart relates that at the battle of Cressy the English troops were formed in three lines, consisting of men-at-arms who fought on foot and were flanked by archers. At Poictiers and Agincourt also the men-at-arms engaged in a similar manner.

The Spanish soldiery, probably from being almost constantly engaged in warfare with the Moors, had early acquired considerable reputation; and the gallantry of the troops on foot, in keeping the field after the cavalry had retired, has been

supposed, though this opinion of the origin of the name is now rejected as fanciful, to have been commemorated by the designation of infantry, which was bestowed upon them, it is said, in consequence of their having been headed on that occasion by an Infanta of Spain. The great share which the Spanish forces had in the wars carried on both in Italy and Flanders during the reigns of Ferdinand, Charles V., and Philip II.; their steady discipline, and the success which resulted from the association of musketeers with pikemen in their battalions, caused the infantry of Spain to be considered, during many years, as the best in Europe. But the rivalry in arms between the Emperor Charles V. and Francis I. of France, and the connection of Henry VIII. of England with both, led, in the several states of those monarchs, to the adoption of the improvements which had been introduced by the Spaniards. It may be added that the practice of keeping up standing armies composed of men trained in the art of war under a rigid system of discipline, together with the universal adoption of the musket, has now brought all the infantry of Europe to nearly the same degree of perfection.

In the British army there are 99 regiments of infantry and 1 brigade of riflemen. The number of commissioned officers in these regiments is usually 39, non-commissioned officers 64, rank and file 800, making the total strength of a regiment 903. The charge of fifty-one regiments of infantry in 1845, averaged 26,556*l.* each. The cost of the three regiments of foot-guards in the same year was as follows:—The Grenadier Guards, with 96 commissioned and 177 non-commissioned officers, and 2080 privates, cost 86,081*l.* The Coldstream Guards and the Scots Fusileer Guards each consisted of 61 commissioned and 109 non-commissioned officers and 1280 privates, and cost 53,011*l.* There are several colonial corps the charges of which are defrayed by this country by a parliamentary vote. In 1845 the number of infantry in the pay of the United Kingdom was 91,737 of all ranks (3879 commissioned officers and 6486 non-commissioned officers, and 81,372 rank and file), and their charge for the year amounted to 2,697,376*l.* There were besides twenty-three regiments of infantry, consisting of 26,073 officers and men, on service in the East Indies, the charges of which, amounting to 763,934*l.*, were defrayed by the East India Company. The number of infantry in the armies of the great European powers is as follows:—Prussia, 87,256; Russia, 500,000; Austria, 270,000, and the proportion of infantry to cavalry is as $5\frac{6}{10}$ to 1; and France has 100 regiments of infantry of the line.

INFANT SCHOOLS. [SCHOOLS.]

INFANT WITNESSES. [AGE.]

INFORMATION, an accusation or complaint exhibited before the Court of King's Bench, against a person for some misdemeanor. It differs from an indictment [INDICTMENT] principally in this, that an indictment is an accusation found by the oath of a grand jury, whereas an information is simply the allegation of the person who exhibits it. Informations are of two sorts: those which are partly at the suit of the king, and partly at that of a subject; and secondly, such as are in the name of the king only. Informations, which are partly at the suit of the king and partly at that of a subject, are generally exhibited upon penal statutes, which impose a penalty on the offender, if he is convicted, one part of which is for the king and the other part for the informer. But no such information, when the penalty is divided between the informer and the crown, can be brought by any common informer when one year after the commission of the offence is expired; nor can it be brought on behalf of the crown after the lapse of two years more; nor when the penalty is originally given to the king only, can it be brought when two years since the commission of the offence have expired (31 Eliz. c. 5).

Informations exhibited in the name of the king alone are either filed ex-officio by the king's attorney-general at his own discretion, when they are called ex-officio informations; or they are exhibited in the name of the king by some private person or informer, and are filed by the master of the crown office. Ex-officio informations are filed in the case of great misdemeanors which disturb the king's

government, or interfere with the discharge of his kingly office. Those filed by the master of the crown office relate to riots, batteries, libels, which disturb the public peace, but do not directly tend to disturb the king's government. No information can be filed, except those in the name of the attorney-general, without the leave of the court of King's Bench, and the application for leave must be supported by affidavits which the party complained of has an opportunity of answering. When any information is filed, it must be tried in the usual way by a petit jury in the county in which the offence was committed. (Blackstone, *Com.* 307; 4 & 5 Will. and Mary, c. 18.)

When it is necessary for the court of chancery to interfere with the regulation or management of any charity, the attorney-general as informant, on the relation of some person (who is called the relator), files an information in the court of chancery for the purpose of bringing the case before the court. This is simply called an information: the other informations here mentioned are distinguished by the name of criminal informations.

If the office of attorney-general is vacant, the solicitor-general has power to file informations.

INFORMER. An informer is a man who lays an information, or prosecutes any person in the King's courts for some offence against the law or a penal statute. Such a person is generally called a common informer, because he makes a business of laying informations for the purpose of obtaining his share of the penalty. [INFORMATION.] Persons are induced to take the trouble of discovering offences, for which a pecuniary penalty is inflicted on the offender, by the promise of the reward; and if the penalty is imposed for the public interest, he who makes the offender known does the public a service. But still, the business of a common informer is looked on with dislike, and he who follows it is generally despised; and, perhaps, the character of common informers is generally such that they deserve all the odium they receive. They stand in a like situation to the common hangman. This dislike of informers, simply as such, is one of the anomalies of society, who hate their benefactor. The real foundation of the dislike, however, among those who can form a just judgment of things is, not the act of information, but the devices, tricks, and meannesses to which a man must often resort in order to know the facts on which his information must be founded. It is the same principle which leads us often to condemn a man for making certain statements in public, not because of the statements, but because of the means by which he may have obtained his knowledge. When a penalty is too heavy, or when the law that imposes it is generally disliked by the people for any reason, good or bad, the popular dislike finds a definite object in the informer who gives effect to the law. The legislature that made the penal law is overlooked, because the legislature is a number of persons: the informer is one, and his agency is seen and felt.

In absolute governments there are spies and political informers, who are the tools of a government which has no rule but its own pleasure. Some people have been dull enough to confound all informers in one class; not seeing that there is a difference between an informer who helps to give effect to a law, and an informer who helps a tyrannical government to entrap and punish persons suspected of disaffection to the government or of designs against it.

INHERITANCE. [DESCENT.]

INJUNCTION. An injunction is a writ issuing by the order and under the seal of a court of equity, and is of two kinds, remedial and judicial.

The remedial writ is used for the following purposes among many others: to restrain parties from proceeding in other courts, from negotiating notes or bills of exchange, to prevent the sailing of a ship, the alienation of a specific chattel, to prevent waste by felling timber or pulling down buildings, the infringement of patents or copyright, to repress nuisances, and to put an end to vexatious litigation. The writ of injunction is useful in stopping or preventing wrongs for which the ordinary legal remedy is too slow.

The remedial writ of injunction is again distinguished as of two kinds, the special and the common injunction, both of

which are obtained on motion before the court.

As a general rule, no injunction will be granted except there is a bill already filed.

Special injunctions are usually obtained before appearance upon motion in court, supported by a certificate of the bill having been filed, and an affidavit verifying the material circumstances alleged in the bill of complaint; but in pressing cases, where the court is not sitting, the process will be granted upon petition supported in like manner.

Special injunctions are also obtained upon the merits disclosed by the answer in those cases which do not appear to be of so urgent a nature that mischief may ensue if the plaintiff were to wait until the bill is answered. The special injunction granted upon the merits after answer continues until the hearing of the cause.

The writ called the common injunction only stays proceedings at common law; and in the first instance it only stays execution, and does not stay trial if issue be joined; but it may by affidavit be immediately extended to stay trial.

The common injunction and the injunction extended to stay trial continue in force until the defendant has fully answered the plaintiff's bill, *and* the court has made an order to the contrary. The defendant therefore cannot apply to dissolve this injunction until he has put in a full answer; but the special injunction before answer continues until answer *or* further order, and consequently the defendant may move upon affidavits to dissolve a special injunction before putting in his answer.

It would be useless, in an article of this description, to state the various rules which govern the practice of the courts as to granting, extending, continuing, or dissolving injunctions. They are laid down at length in the various books of practice, and do not admit of compression.

The judicial writ of injunction issues subsequently to a decree, and is a direction to yield up, to quit, or to continue the possession or lands, and is described as being in the nature of an execution. This writ, however, is virtually abolished by the statute 11 Geo. IV. and 1 Wm. IV. c. 36, sec. 11, rule 19, which gives the writ of assistance at once, in such cases rendering the intermediate steps by injunction, attachment, &c. unnecessary.

The Roman Interdictum was in many respects similar to the English injunction. [INTERDICTUM.]

INJUNCTION, SCOTLAND. [INTERDICT.]

INNS OF COURT AND OF CHANCERY. When the houses of law were first established seems very doubtful; but the fixing of the Court of Common Pleas at the palace at Westminster appears greatly to have contributed to their origin. This brought together a number of persons who (as Spelman says) addicted themselves wholly to the study of the laws of the land, and, no longer considering it as a mere subordinate science, soon improved the law and brought it to that condition which it attained under King Edward I. They purchased at various times certain houses between the city of London and the palace of Westminster, for the combined advantage of ready access to Westminster and of obtaining provisions from London. "For their liberties and privileges" (observes Mr. Agard, in an essay written in the end of the seventeenth century), "I never read of any granted to them or their houses: for having the law in their hands, I doubt not but they could plead for themselves, and say, as a judge said (and that rightly), that it is not convenient that a judge should seek his lodging when he cometh to serve his prince and his country."

In Fortescue's time there were four inns of court and ten inns of chancery, the former being frequented by the sons of the nobility and wealthy gentry, and the latter by merchants and others who had not the means of paying the greater expenses (amounting to about "twenty marks" per annum) of the inns of court. The first were called *apprenticii nobiliores*, the latter *apprenticii* only.

On the working days, says Fortescue, in his 'De Laudibus Legum Angliæ,' most of them apply themselves to the study of the law; and on the holy days to the study of Holy Scripture. But it appears that they did not entirely neglect lighter pursuits, for, says the same learned author, they learn to sing and to exercise

themselves in all kind of harmony, and they also practise dancing and other noblemen's pastimes. He says they did everything in peace and amity, and although the only punishment that could be inflicted (as is the case now) was expulsion, they dreaded that more than other criminal offenders fear imprisonment and prisons. The inns of court, formerly called "hostels," are Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn.

The Inner Temple, as well as the Middle Temple, owes its name to the Knights Templars, who appear to have established themselves here about the year 1185, and called their house the New Temple. After the dissolution of that order, it was granted to the Knights of St. John of Jerusalem by King Edward III., and was soon after, according to Dugdale, demised by them to "divers professors of the common law that came from Thavye's Inn, in Holburne."

The church, which is common to both societies, was founded by the Templars, upon the model of that of the Holy Sepulchre at Jerusalem, and was consecrated in 1185, and dedicated to the Virgin Mary. It consists of a round tower at the western entrance, and three aisles running east and west, and two cross aisles. This church has been recently restored and beautified.

Besides these four inns of court, there are eight inns of chancery, which are a sort of daughter inns to the inns of court. They are now only used as chambers, and are principally inhabited by solicitors and attorneys. Two belong to Lincoln's Inn, namely, Furnival's Inn and Thavye's Inn; the former of these two has lately been rebuilt, and has a front towards Holborn; it comprises upwards of 100 sets of chambers. Four belong to the Temple, Clifford's Inn, Clement's Inn, New Inn, and Lyon's Inn. All these are outside Temple Bar, near the Strand. The remaining two, Staple Inn and Barnard's Inn, belong to Gray's Inn. Most of the inns of chancery have a hall, in some of which dinners are provided and terms kept, as in the inns of court; but these terms do not qualify the student to be called to the bar.

Each inn of court is governed by its own benchers, or "antients," as they were formerly called, who fill up the vacancies in their own body. Any barrister of seven years' standing may be elected a bencher; but that honour is now usually conferred only on queen's counsel. The Benchers of each inn exercise the power of calling to the bar the members of their own inn. [BARRISTER.] They also exercise the power of disbarring a barrister, that is, depriving him of the privileges which they have conferred by calling him to the bar, if they see sufficient reason for such a proceeding.

INQUEST. [CORONER.]

INSANITY, LEGAL. [LUNACY.]

INSOLVENT is, literally, a man who cannot pay his debts. But a man is not properly called insolvent till he has been found to be so by the process to which he is liable under the insolvent acts, if he does not pay his creditors. Statutes have from time to time been passed for the purpose of releasing from prison, and sometimes from their debts, persons whose transactions have not been of such a nature as to subject them to the Bankrupt Laws. These statutes have been passed for a limited time only, and have been continued by subsequent enactments.

The Insolvent Law of England was consolidated by the 7 George IV. c. 57, continued by the 1 William IV. c. 38, and since by annual statutes for one year. It was somewhat modified by 1 and 2 Victoria, c. 110. The law is administered by commissioners appointed by the crown, in a court called the Insolvent Debtors' Court, and three of the commissioners from time to time make circuits, and give their attendance at the assize towns or other places where prisoners may be ordered to appear. [CIRCUITS.]

By the 1 & 2 Vict. c. 110, no person can be arrested upon mesne process in any civil action, except in certain cases specially provided for by the act.

The general object of the law as to insolvency is to release the debtor from prison, to free his person from liability as to debts contracted previous to his discharge but to make all his present and future ac-

quired property available for the benefit of his creditors. Where new creditors have a claim on the insolvent's subsequently acquired property, which is of such a nature that it cannot be taken in execution, it may be necessary to apply to a court of equity, which in administering such estate of a deceased insolvent, will pay the creditors subsequent to the insolvency first, and then the creditors prior to the insolvency.

It is not easy to state the law and practice as to insolvency at present, in consequence of several acts having been recently passed in a great hurry, and in consequence of the last act having only lately come into operation.

From August, 1842, to August, 1845, three acts have been passed relating to insolvent debtors: these are 5 & 6 Vict., c. 116; 7 & 8 Vict., c. 96; and 8 & 9 Vict., c. 127.

The act 5 & 6 Vict., c. 116, which came into operation 1st November, 1842, enabled a person who was not a trader within the meaning of the bankrupt laws, or a trader who owed debts which amounted in the whole to less than 300*l.*, to obtain by petition a protection from the Court of Bankruptcy in London or the commissioners of the District Courts of Bankruptcy in the country, from all process whatever (except under a judge's order), either against his person or property until the case was adjudicated by the court. In the interim the insolvent's property was vested in an official assignee appointed by the court. If, on the hearing of the petition, the commissioner were satisfied with the allegations which it contained, and that the debts were not contracted by fraud, breach of trust, or by any proceedings for breach of the laws, he was empowered to make a final order for the protection of the petitioner from all process, and to cause his estate and effects to be vested in an official assignee, together with an assignee chosen by the creditors. The commissioner might also, if he thought fit, make an order for carrying into effect such proposal as the petitioner might have set forth in his petition, and direct some allowance to be made for the support of the insolvent out of his effects.

The act 7 & 8 Vict., c. 96, passed 9th August, 1844, is entitled 'An act to amend the law of Insolvency, Bankruptcy, and Execution.' It enacted that any prisoner in execution upon judgment in an action for debt, who was not a trader, or whose debts, if a trader, were under 300*l.*, may, without any previous notice, by petition to any court of bankruptcy, be protected from process and from being detained in prison for any debt mentioned in his schedule; and if so detained, the commissioners of any bankruptcy court may order his discharge.

The property of the insolvent may be seized for the benefit of his creditors with the exception of the wearing apparel, bedding, and other necessaries of the petitioner (the insolvent under 7 & 8 Vict. c. 96) and his family, and the working tools and implements of the petitioner not exceeding in the whole the value of 20*l.* Under the 7 & 8 Vic. c. 96 (§ 39) if a petitioner for protection from process (pursuant to the provisions of that act) shall wrongfully and fraudulently omit in the schedule, which schedule he is required to make (5 & 6 Vic. c. 116), any property whatsoever, or retain or exempt out of such schedule any wearing apparel, bedding, or other necessaries, property of greater value than 20*l.*, he shall, upon being duly convicted thereof, be liable to be imprisoned and kept to hard labour for any period not exceeding three years.

The 7 & 8 Vic. c. 96 made a great alteration as to debts under 20*l.* The 57th section is as follows: "Whereas it is expedient to limit the present power of arrest upon final process, be it enacted, That from and after the passing of this act, no person shall be taken or charged in execution upon any judgment obtained in any of her Majesty's superior courts, or in any county court, court of requests, or other inferior court, in any action for the recovery of any debt wherein the sum recovered shall not exceed the sum of 20*l.* exclusive of the costs recovered by such judgment." The 58th section provided that upon application to a judge, of one of the superior courts of law at Westminster, or to the court in which such judgment as is mentioned in section 57,

shall have been obtained, all persons in execution at the time of passing this act be discharged, when the debt exclusive of costs did not exceed what is specified in the 57th section. Accordingly, such persons, on making application pursuant to the 58th section of this act, were discharged from prison in England and Wales.

The consequences of the legislation contained in the 57th and 58th sections of 7 & 8 Vict. c. 96, were these. All persons who were in confinement for debts under 20*l.*, exclusive of costs, might get their liberty; but the judgment upon which the debtor was taken in execution remained in force (§ 58), and the judgment creditor or creditors had their remedy and execution upon every such judgment against the property of the debtor, just as they might have had if he had never been taken in execution upon such judgment. The 59th section gave to the judge who should try such cause (§ 58), being either a judge of one of the superior courts or a barrister or attorney at law, power to imprison the defendant (debtor) for such times as are mentioned in § 58, if he should appear to have been guilty of fraud in contracting the debt, or had contracted it under the other circumstances mentioned in the 59th section.

The amount of debts in England and Wales under 20*l.* must always form a very considerable proportion of all the debts that are at any time due in England and Wales. Such debts comprehend a large part of the dealings of shopkeepers and petty tradesmen; probably in a very large number of cases debts under 20*l.* may comprehend every debt that is due to a large body of petty tradesmen. The tradesmen no doubt do in many cases give credit to persons who have no reasonable means of payment, and with whose character and condition they are very imperfectly acquainted. Many persons are always willing to contract a debt, but never intend to pay if they can help it. Another class of debtors consists of those whose morality is not so well fixed as to make them good and willing payers, but who will pay and do pay under the combined influence of some feeling of honesty and some fear of the consequences of non-payment. A third class, which we hope may be the most numerous of all, is willing to pay, but often requires time, and must be deprived of many comforts if they cannot command the credit which their character and earnings fairly entitle them to. [CREDIT.]

The 57th and 58th sections of the 7 & 8 Vict. c. 96, deprived creditors of their hold upon their debtors for sums under 20*l.*, and left to all persons who had claims upon persons in prison for sums above 20*l.*, the power of still keeping their debtors there. As to debts under 20*l.* existing before the act, and for which the debtor was not in execution, it left the creditor no remedy except against his property. And here we may remark that the question as to the imprisonment of debtors seems reducible within narrow limits, if we view it merely as it affects the interests of the community. The object in allowing a debtor to be seized is not to punish him as a debtor, but that he may be subjected to a complete examination for the purpose of discovering what his property is, that he has not parted with it to defraud his creditors, and that there was no fraud in the contracting of the debt. The simple fact of being indebted and unable to pay should not be punished. The contracting debts under such circumstances as amount to fraud ought to be punished. The principle then which should guide a legislature should be, not to punish a man simply because he is indebted and cannot pay his debts, but to punish him for any fraud that is committed either in contracting the debt or in attempting to evade the payment of it. Now in the case of a debtor, fraud, both in contracting a debt and in attempting to evade payment, is known by experience to be a thing of frequent occurrence; and it is therefore just and reasonable that judgment creditors should have the power to secure the person of their debtor until he has paid his debts or made a full and honest statement of his means of payment.

The effect of the last-mentioned act was of course to diminish the credit given by small dealers to all persons.

The act also relieved many dishonest debtors from the payment of their past debts, for it deprived the creditor of his most efficient remedy; and as to all future dealings, it rendered the small tradesman less willing to give credit to those who, under the old system, had it. But the act did more: it encouraged fraud and a fraudulent system of trade. Persons who were refused credit by respectable tradesmen, who honestly paid for their goods, could still obtain credit of tradesmen whose practices were not so honest. The amount of mischief, both pecuniary and moral, caused by this unwise measure, may be estimated from the loud complaints against it from all parts of the kingdom, from a great variety of tradespeople, especially tailors, shoemakers, butchers, bakers, grocers, three-fourths of whose debts, and of retail tradesmen generally, are ordinarily in sums under 20*l.* In some wholesale trades three-fourths of the debts are also in sums under 20*l.* Their debtors set them at defiance, as, except in cases of fraud, there was no power of obtaining payment except by an action in one of the superior courts, in which case the creditor would have to pay the costs out of his own pocket, and in the end might be unable to obtain satisfaction for the debt. Even in the small debts' courts, the costs allowed being small, the creditor who sued was generally charged extra costs, which could not be charged to the debtor. Many tradesmen had debts in sums of less than 20*l.* which in the aggregate amounted to a large sum, perhaps in some cases to 2000*l.* or 3000*l.* In some of the provincial towns it was stated that the aggregate amount owing in sums under 20*l.* was not less than 100,000*l.*

It would seem as if the legislature made this alteration as to 20*l.* debts under the opinion that all persons liable to that amount and under, must be very ill-used people who required relief, and that the creditors need not to be regarded in the matter. The creditors, however, did not fail to make their complaints known, and never were complaints more reasonable.

The legislature have now remedied the mischief which they did by a new act, 8 & 9 Vict., c. 127, and intituled very significantly 'An act for the better securing the payment of small debts;' and it began by declaring, which every thinking man will allow to be true, that "it is expedient and just to give creditors a further remedy for the recovery of debts due to them." The sums to which the act applies are debts under 20*l.*, exclusive of costs. The powers of 7 & 8 Vict., c. 96, and of the several acts relating to insolvency are applicable to 8 & 9 Vict., c. 127.

The act (8 & 9 Vict. c. 127) gives to creditors the means of obtaining payment of sums under 20*l.*, besides the costs of suit, by the following process. A creditor who has obtained judgment, or order for payment of a debt not exceeding 20*l.* (exclusive of costs) may summon his debtor before a commissioner of bankruptcy; or he may summon his debtor before any court of requests or conscience, or inferior court of record for the recovery of small debts, if the judge of such court is a barrister-at-law, a special pleader, or an attorney of ten years' standing. It may here be remarked that this part of the act which takes the jurisdiction of the courts of request out of the hands of non-professional commissioners is a new provision. The judges of these courts are made removeable for misbehaviour or misconduct, and the courts will be assimilated in some degree to the Bankruptcy and Insolvency Courts.

On the appearance of the debtor before the commissioner or court upon summons, he will be examined by the court, or by the creditor if he think fit, "touching the manner and time of his contracting the debt, the means or prospect of payment he then had, the property or means of payment he still hath or may have, the disposal he may have made of any property since contracting such debt." The commissioner is empowered to make an order on the debtor "for the payment of his debt by instalment or otherwise;" and if the debtor fails to attend or to make satisfactory answer, or shall appear to have been guilty of fraud in contracting the debt, or to have wilfully contracted it without reasonable prospect of being able

to pay it, or to have concealed or made away with his property in order to defeat his creditors, the commissioner or judge of the court may commit him for any time not exceeding forty days; but such imprisonment will not operate in satisfaction of the debt. Wearing apparel and bedding of a judgment debtor, and the implements of his trade, amounting in the whole to a sum not exceeding 5*l.* in value, are exempted from seizure. The powers of all inferior courts under this act are assimilated; and a suit commenced in one small debt court cannot be removed to another similar court in the same town. When a debt exceeds 10*l.*, the suit may be removed by certiorari to the superior courts. Any of her Majesty's secretaries of state are empowered to alter or enlarge the jurisdiction of all small debts and inferior courts. The act itself enlarges the jurisdiction of courts of requests, where sums not exceeding 2*l.* could heretofore only be recovered, and now sums not exceeding 20*l.* may be recovered in them. It is provided by the act, that all suitors' money paid into court and not claimed for six years, is to go into a fund for the payment of the necessary expenses of carrying on the business of the court.

The act 7 & 8 Vict. c. 70, which came into operation 1st September, 1844, and is entitled 'An Act for facilitating arrangements between Debtors and Creditors,' is of the nature of an insolvent act. Under this act a debtor who is not subject to the Bankrupt Laws may apply by petition to a court of bankruptcy and obtain protection from arrest, provided his petition be signed by one-third in number and value of his creditors. The debtor's petition must set forth the cause of inability to meet his creditors, and contain a proposition for the future payment or the compromise of his debts, and a statement of his assets and debts. Any one of the commissioners of bankruptcy may examine the petitioning debtor, or any creditor who may join in the petition, or any witness produced by the debtor, in private; and if he be satisfied with the statements made, he may convene a general meeting of all the petitioner's creditors, and appoint an official assignee, registrar, or a creditor to report the proceedings. If at the first meeting the major part of the creditors in number and value, or nine-tenths in value, or nine-tenths in number of those whose debts exceed 20*l.*, shall assent to the proposition of the debtor, a second meeting is to be appointed. If at the second meeting three-fifths of the creditors present in number and value, or nine-tenths in value, or nine-tenths in number of those whose debts exceed 20*l.*, shall agree to the arrangement made at the first meeting and reduce the terms to writing, such resolution shall be binding, provided one full third of the creditors in number and value be present. Under this arrangement the affairs of the debtor may be settled. When this has been effected, a meeting of the creditors is to be held before the commissioner, who is to give the debtor a certificate, which shall operate as a certificate under the statute relating to bankrupts.

The regulations of the 7 & 8 Vict. c. 96, as to debts under 20*l.* caused universal dissatisfaction among creditors in England and Wales, as we have already observed. The debtors, we may presume, were satisfied with the new law. The evidence taken before the Lords' Committee in 1845 proved the necessity of amending this act. The history of this piece of unwise legislation and of its correction is useful. It shows how ill-considered measures may sometimes become law in this country, in which the mass of public business is so enormous that important statutes are sometimes enacted in great haste and consequently without due deliberation. It also shows that the force of opinion, when sustained by sound reasons and directed by men of judgment, is strong enough to induce the legislature to amend their mistakes.

The law of debtor and creditor has been a difficulty in all countries. In England an insolvent debtor may, in certain cases, be subjected to the operation of the Bankrupt Laws. [BANKRUPT.] If he cannot claim the benefit of the Bankrupt Laws, he is subject to the law that relates to insolvent debtors. The question of arrest and imprisonment for debt has been chiefly discussed with reference to insolvent debtors, that is, the

class of debtors whose debts have not been contracted in the operations of trade or commerce, or under such circumstances as to bring them within the Bankrupt Laws.

Formerly there were two kinds of arrest in civil cases, that which took place before trial, and was called arrest on mesne process; and that which takes place after trial and judgment, and is called arrest on final process. In the arrest on mesne process it was only necessary for the plaintiff to make an affidavit that the cause of action amounted to 20*l.* (7 & 8 Geo. IV. c. 71), upon which he could sue out a writ called a *capias*, which was directed to the sheriff, who thereupon gave his officers a warrant for seizing the alleged debtor. The statute 1 & 2 Vict. c. 110, §§ 2, 3, 4, 5, 6, enacted that no person can be arrested for alleged debt before a judgment has been obtained against him, unless it can be shown to the satisfaction of a judge of one of the superior courts that the plaintiff has a cause of action against such person to the amount of 20*l.* or upwards, and that there is probable cause to believe that the defendant is about to quit England. A defendant may also be arrested upon mesne process when he has received an unfavourable judgment in the court for the relief of insolvent debtors (1 & 2 Vic. c. 110, § 85).

Arrest in execution is therefore now the only arrest that is of any practical importance: it means the arresting of a man after a court of justice has decided that he owes a debt. The ground of arresting the man is, that he does not pay the debt pursuant to the judgment; in other words, he disobeys the command of the court, which has declared that he must pay a certain sum of money to the plaintiff.

On the subject of maintaining the law of arrest in execution there has been difference of opinion. The best arguments in favour of it that we have seen are contained in a 'Supplementary Paper on Bankruptcy and Insolvency, by William John Law, Esq. Dissentient from the Report. Presented to both Houses of Parliament, 1841.' Mr. Law did not sign the report of the other commissioners on the subject because he did not agree with them; and the Supplementary Paper contains the reasons of his dissent.

With respect to arrest in execution, Mr. Law's intimate knowledge of the relation of debtor and creditor has enabled him to answer fully all the arguments of those who attempt to show the insufficiency of this final arrest. He has proved beyond doubt the justice of this final arrest, or if the word justice be objected to, its usefulness to the community. A man is not now arrested till he has disobeyed the judgment of a court of justice. It is his business to show why he disobeyed the judgment; and in the mean time either his person must be secured, or the judgment of the court must be treated as a mere idle form. It may be said, the plaintiff can proceed to take the debtor's property: but even visible property cannot always be got at; for when the sheriff goes to seize it, "some one on the premises holds up a bit of parchment called a bill of sale, and frightens him out again; there is not one plaintiff in five hundred, great or small, who has courage enough to indemnify the officer, and defy the fraud." If there is this difficulty as to the taking possession of a debtor's visible property, what must be the difficulty of getting at the property of the debtor which is not visible? And what other mode can be suggested of compelling the defendant to give a true account of all his property than to imprison him until he does? "A defendant has always been prone to place his property out of reach of an execution, but there has been this one restraint: he says to himself, 'If I make my property safe, they will take me, and then I must bring it forward.' When property only can be touched, the argument is changed, it becomes this: 'If I make my property safe, my enemy can do nothing.' So necessary is process against the person for process against the property, and so unreasonable is it to require of the creditor by record the establishment of any further case, in order to entitle him to an execution. His judgment is his case: the clearest duty lies on the other party to establish his exemption from the task of satisfying it."

The great argument of the Report from which Mr. Law dissents is this: that all execution against the person presumes fraud. This argument is very absurd. The presumption ought to be against the debtor who does not obey the judgment of the court. He may be guilty of fraud or he may not: it is his business to explain why he disobeys the order of the court. This argument against execution is founded on the presumption being in the debtor's favour, instead of being, as it is, against him. "The practical justice and wisdom is in subjecting all (debtors) to searching inquiry, for the purpose of ascertaining whether they are dishonest or not. I am quite sure that in that court (the Insolvent Court) where searching inquiry is known and practised, it is found necessary to be applied to every case as the means of disclosing its true character and merits."

"Blamelessness must not be presumed: faultiness is to be presumed: it may or may not be that which is told by the word fraud; the precise shade cannot be presumed; the character and degree are to be learned through a deliberate and forced enquiry. It is misrepresentation to say that *fraud* is presumed and punished on presumption; the coercion which was once purely punishment is now necessary coercion to the investigation of a question in which presumption is and ought to be against the party coerced. The debtor in execution is the applicant for indulgence; he has to establish his case; but he is at liberty to institute proceedings towards this question instantly on his arrest; and not only is he at liberty to seek exemption from the consequences of the injury which he has done to the particular party who has pursued him, but to use the same opportunity for acquiring a privilege against every person in the kingdom towards whom he stands in a similar predicament: on giving to the true owners a part of their property, or on showing that there remains no part to surrender, he receives, if excuse is found for granting it, this great boon—a total freedom for the future of person and property; save that if ever he become in the full and fair sense of the words of ability to pay, there will reside in a competent tribunal the power to ascertain that ability and to exact that payment.

"It is almost unnecessary to say that these results ought not to be enjoyed without that full disclosure of the history of his property which is found in the schedule of an insolvent debtor; that full opportunity for the creditors to challenge this history; and that fair, deliberate, and effective investigation of its truth which is made in that court."

These general arguments in favour of the justice of final execution are supported by Mr. Law with facts equally strong, which also prove the efficacy of such arrest. The mode in which he has examined the arguments in favour of abolishing arrest, which are derived from certain returns, is completely convincing. The wonder is that such shallow arguments against the law of arrest should ever have been brought forward. The efficacy of arrest must not be estimated "by the extent of dividends made in the Insolvent Debtors' Court, or the proportion of unfavourable judgments;" though it must be remembered that the dividends are not none at all, as some people suppose.

It is clearly shown by Mr. Law that arrest does make people pay, who do not pay till they are arrested; it is found that the examination to which insolvents are subjected exposes a great amount of fraud; and it is also certain that the number of those who are induced to pay by the fear of arrest is considerable, just as the fear of other punishment prevents many persons from committing crimes, who have no other motive to deter them. The fear of arrest is precisely that preponderating weight which is wanted to induce those whose honesty is wavering to incline to the right side.

The arguments of Mr. Law should be read by every man who wishes to form a sound judgment on the law of insolvent debtors in England; and so much of his arguments as have here been given, may help to diffuse some juster opinions on a subject in which a sympathy with debtors, to the total forgetfulness of creditors, has led many well-meaning people to adopt conclusions that tend to unsettle all the

relations of society, and to confound honest men and rogues.

In *Scotland*, the being in a state of insolvency has the same effect in regard to questions of stoppage in transitu, and others connected with sale and delivery, as it has in England. The word is often used in connection with the bankrupt law, because being insolvent is one of the ingredients of Notour Bankruptcy. [BANKRUPT.] Cessio bonorum is the name of the procedure that in Scotland stands in place of the insolvency relief system in England. [CESSIO BONORUM.]

INSTANCE COURT. [ADMIRALTY, COURTS OF.]

INSTITUTION. [BENEFICE, p. 340.]

INSURANCE, FIRE. Among those associations whose object it is to secure individuals from the consequences of accidental loss, companies for assuring the owners of property from loss arising from fire are among those of most obvious utility, and have long been successfully established in this country. It might have been expected that the great advantage to society in general of individuals providing against their ruin by means of trifling annual contributions would have been so far acknowledged on the part of the British legislature as to prevent the imposing of a tax upon the prudence of the people. Such, however, is not the fact, and a duty is levied at the rate of 3*s*. per cent. per annum upon the amount of property insured against destruction by fire, which rate is, in most cases, equal to 200 per cent. upon the premium demanded by the insurance offices, which premium is found sufficient to cover all losses, as well as to defray the expenses of management, and to afford an adequate return to capitalists who embark their property in the undertaking. How far the imposition of this tax prevents insurances being effected it is not possible to determine. That many persons neglect to insure against the risk of fire from being compelled to pay 4*s*. 6*d*. for each 100*l*. value of their property, who would not neglect such precaution if they could attain security by payment of 1*s*. 6*d*. for a like amount, will be readily acknowledged; and the propriety of repealing this tax has been frequently urged. But this tax produces to the revenue above a million sterling, and as the amount is raised without trouble and at little cost, the tax offers to the minister of the day an inducement for its continuance which it will be difficult to overcome. There is indeed no individual who can complain of special injury or grievance from the tax: it is imposed on all persons alike; and the insurance offices, by which it is collected and paid over to the government, have an advantage in its continuance, in respect of the discount or allowance which is made to them on the amount—an advantage, however, more specious than real, as the repeal of the tax would greatly increase the business of the offices.

During a period of distress experienced by the agriculturists, the landowners and farmers of Great Britain, acting through their representatives in parliament, obtained in 1833 an advantage over other classes of the community by the repeal of the duty upon insurance of farm produce, farming stock, and implements of husbandry (3 & 4 Wm. IV. c. 23).

There is no reason why the insurance of farm produce should have this advantage over any other kind of produce; and the total repeal of this impolitic and now unjust tax, since it no longer falls equally on all, would be loudly called for by all classes of the community, if they were aware of their true interests. It is the interest of the state that partial losses should be distributed among a large number of capitalists, to each of whom the loss is trifling, while by the contributions of many individuals one individual may be saved from ruin, and that capital which he is productively employing in some branch of business may not be all at once withdrawn from it. The advantage to the individual whose property is destroyed, of having it restored to him so that he does not lose his business or occupation, is too obvious to need any remark. The advantage to the labourer is equally great, for in many cases the loss of the employer would throw him and others out of profitable employment; and if his employer were not indemnified by a fire insurance, the labourer would often be ruined as well as the employer.

Cases occur in which frauds are practised by parties insuring for more than their property is worth; and there are also cases in which property has been burnt by insolvent persons in order to obtain the insurance money. The companies sometimes consider it prudent to pay the money, though the claim might be disputed; and sometimes it is successfully disputed. The best institutions are liable to be abused; but institutions are useful when their object can be effected in the great majority of cases, and the exceptions must be put to the account of accident, just as it is useful to plough and sow, though accident sometimes prevents the reaping.

The amount of farming stock insured in 1843 was 60,232,999*l.*, of which 4,598,794*l.* was insured in Scotch and Irish offices; 33,628,007*l.* in London offices; and 22,006,198*l.* in English country offices. In 1843 the Norwich Union office insured farming stock to the amount of 9,618,306*l.* The Fire Offices have on some occasions refused to insure farming stock in districts where the agricultural labourers were badly off and acts of incendiarism very frequent.

The sums insured against fire in England, Scotland, and Ireland, in 1801 and 1841 were as follows:—

	1801	1841
England .	£219,623,954	£605,878,933
Scotland . .	3,786,146	44,655,300
Ireland . .	8,832,125	31,005,606

The total sums insured in the United Kingdom in each of the years 1801, 1811, 1821, 1831, and 1841, and the increase per cent. on a comparison of each year with 1801 were as under:—

	£	Inc. per cent.
1801	232,242,225	
1811	366,704,800	57·8
1821	408,037,332	75·6
1831	526,655,332	126·7
1841	681,539,839	193·4

(Porter's 'Progress of the Nation,' iii. p. 123.)

The duty on fire insurances has exceeded a million sterling annually for the last few years. The duty in the following years was:—

	£		£
1837	903,311	1841	1,022,312
1838	944,984	1842	1,027,467
1839	968,476	1843	1,051,543
1840	974,610	1844	0,000,000

In one London Fire Insurance Office the duty paid in 1843 amounted to 171,692*l.* and in another to 125,921*l.*, or, together, 297,613*l.* out of 1,051,543*l.* paid by all the offices in the United Kingdom. The duty paid by Scotch and Irish offices in 1843 was 115,770*l.*; 690,446*l.* by London offices; and 245,327*l.* by country offices in England.

INSURANCE, LIFE. [LIFE INSURANCE.]

INSURANCE, MARINE. [SHIPS.]

INTERDICT, in the law of Scotland, a judicial prohibition of injurious illegal proceedings. Although both the term and the practice have been derived from the interdictum of the Romans, the process has much more analogy with the "injunction" of the English Equity Courts. It has to be kept in view, however, that in Scotland neither a real nor a nominal conflict between courts administering the law of civil rights is known, and therefore there is nothing analogous to an injunction in a court of equity against proceedings in a court of law. Interdicts granted by the ordinary law courts against proceedings in the ecclesiastical courts are however not uncommon, and in the late discussions which produced the secession of the "Free Church," many interdicts were granted by the Court of Session against the execution of proceedings of the ecclesiastical courts which were supposed to interfere with the rights of individuals. The Court of Session and the local courts of the sheriffs can grant interdicts. The practice is, when a case of immediate danger from any anticipated proceeding can be made out, to grant an interim interdict on an ex parte application, the other party being heard before it is made final. Where no case of immediate urgency is made out, the court appoints parties to be heard on the merits, or technically "passes the vote to try the question." In the Court of Session interdicts are applied for to the Lord Ordinary on the bills, and his decision may be carried to

the inner house. On a late occasion, some persons having contracted with the proprietors of a grave-yard in Edinburgh for a site on which a public monument should be erected to the memory of "The political martyrs of 1793-4," some persons who had family burial places in the grave-yard applied for interdict, on the plea that the proposed monument was offensive to them. The interdict was granted by the Lord Ordinary on the bills, but recalled by the Inner House.

INTERDICTUM. In the Roman law the general distinction between an action (actio) and an interdict (interdictum) is this. In the case of an action, the prætor, upon the application of a complainant, if he saw no objection, granted him an action in these terms: judicium dabo, or actionem dabo. A judex was then appointed, whose business it was to examine into the matter pursuant to the prætor's formula, and to decide or pronounce a judgment. In the case of an interdict, when application was made to the prætor by a complaining party, if a sufficient case was made out, the prætor immediately made an order, which varied according to the case, and was indicated by one of these words: restituas, exhibeas, veto. The general description of the prætor's interdictum is this: it ordered a certain thing to be done, or it forbade a certain thing to be done. When the order was to produce (exhibere) a certain thing, or to make some restitution (restituere) as to a certain thing, the order was properly called a decretum. When the order forbade a certain thing, as for instance, to disturb a man fairly (bonâ fide) in possession of a thing, it was properly called an interdictum. But the term interdictum was also applied as a general term to both kind of orders.

The prætor's order might in some cases settle the matter in dispute. If the defendant submitted, no farther proceeding would be necessary. If further proceedings were necessary, the interdict must be viewed merely as the commencement of judicial proceedings, which were comprehended under the term actio in its wider sense. The matter in dispute was brought before a court (judex, or recuperatores) named by the prætor.

As to the exact nature of the Roman interdict, there is some difference of opinion. The question is, whether the interdict was merely a summary process, or whether it was (originally) a mode of giving relief when there was no other mode.

The authorities for the Roman interdict are Gaius iv., 138-170; Paulus, *Sententiae Receptae*, v., tit. 6; Dig. 43; See also Savigny, *Das Recht des Besitzes*, p. 403-516, 5th ed.; Puchta, *Institutionen*, ii. p. 138.

INTEREST. [Usury.]

INTERMENT, the burial of a dead body in the earth. The manner of disposing of the bodies of the dead has varied in different nations; but the most general modes have been interment in the earth and burning on a funeral pile. The practice of burying is probably the oldest mode, and with most nations has been the ordinary mode of sepulture; but the custom of burning the body, and afterwards collecting the ashes and depositing them in a tomb or urn, became very general among the Greeks and Romans. Among the Greek nations, however, both the burning of the dead and the interment of dead bodies in the earth were practised. The Romans in the earlier periods of their history certainly buried their dead It is recorded that Sulla was the first member of the Cornelia gens who was burnt. The Egyptians do not seem to have ever adopted the practice of burning the dead; and though, as we have observed, burning became common among the Greeks and Romans, it seems that interment was always practised by the lower orders among the Romans. At Rome bodies were sometimes buried in pits (puticuli), or thrown to decay in certain unfrequented places. (Varro, *De Ling. Lat.* v. 25; Horace, 1, Sat. v. 8, &c.) Tacitus (xvi. 6) speaks of the embalming and interment of Poppæa, the wife of Nero, as a deviation from the general practice. The practice of burning the dead appears to have gradually gone into disuse under the Empire; and probably it was never practised by the Christians.

A Constitution of the Emperor Justinian (A.D. 537) regulated the expense of

funerals in Constantinople. The constitution refers to prior legislation of Constantine and Anastasius. The object of the regulation is well expressed in the following words:—It was to "secure men against the double calamity of losing their friends, and at the same time incurring heavy pecuniary liabilities on their account." Provision was made for securing interment to each person free of cost, and for protecting the surviving friends from the extortion of those who buried the dead. Funds were appropriated for the purpose of interment, which was conducted by persons appointed for the purpose, and with decency, but at little cost. All persons were to be buried alike, with some small allowance in favour of those who wished for a little more display at their own cost; but even this additional expense was limited; and it is said, "thus there will be nothing undetermined; but both those who wish to have funerals on a moderate scale will enjoy the advantages of our rule, and those who wish for more liberal arrangements will not be mulcted heavily, and will be enabled to show their liberality at moderate cost." The whole Constitution is very curious; but a full explanation of it would require some labour. The objects of it have, however, been sufficiently stated here. The means by which they were accomplished would not be suitable to this country. (*Novell*, 59.)

At Bombay, says Niebuhr (*Reisebeschreibung*, &c. ii. 50), "the Parsees have a peculiar manner of interring their dead. They do not choose to rot in the earth like the Jews, Christians, and Mohammedans, nor be burnt like the Indians; but they let their dead be digested in the stomachs of birds of prey. They have at Bombay a round tower on a mountain at some distance from the city, which is covered on the top with planks. Here they place their dead, and after the birds of prey have eaten the flesh, they collect the bones below in the tower, and the bones of the men and women in separate vessels." Herodotus (i. 140) says of the antient Magi that they never interred their dead till they were torn by birds or dogs. In Herbert's 'Travels' (ed. 1638, p. 54), there is a representation of one of these Parsee towers. Some nations have eaten the aged and also killed and eaten those who were attacked by disease, and thus anticipated the trouble of interment. This revolting practice is established on sufficient evidence (Herodotus, i. 216, iii. 99; *London Geograp. Journal*, ii. 199; BATTAS, *Penny Cyclopædia*.) Dr. Leyden states that the Battas frequently eat their aged, or infirm relatives as an act of pious duty. The Battas are not a ferocious, but a quiet and timid people. Niebuhr says in a note to the extract given just above, "At Constantinople I heard, that in the southern part of Russia there is a people who think that they can show to their dead friends and relations no greater honour than to eat them. So different are the opinions of mankind."

These are, however, singular exceptions to the general practices of all nations. Among the Europeans and those descendants of Europeans who have settled in parts beyond Europe, the interment of the dead in the earth is the universal practice. It was proposed, indeed, to revive the practice of burning during the French revolution, but the proposal was not adopted. It has also been the practice of all nations called civilized, and perhaps of most nations called barbarous, to treat the dead with decency, and to accompany the funeral ceremony with religious rites.

The places set apart for the burial of the dead are generally called cemeteries, which is a Greek term signifying "a place of rest or sleep," and was applied to common places of interment by the early Christians. Among the Greeks cemeteries were perhaps always without the cities. Among the Romans the tombs were generally placed by the sides of the public roads. It was an enactment of the Twelve Tables that a dead body was not to be buried or burnt within the city (Dirksen, *Zwölf-Tafel Fragmente*, p. 657). The prohibition against burning in the city is supposed by Cicero to have been made to prevent risk from fire: the reason for interment not being allowed within the city is not stated. A regulation of the Twelve Tables appears to have limited expenses at funerals (Dircksen, p. 665); and a law to the same effect was

passed in the time of the Dictator Sulla (Plutarch, *Sulla*, c. 35).

The early Christians followed the custom of the Romans in burying outside of cities; but they afterwards transferred their burial-places to the vicinity of the churches and within towns, where they have continued to be generally situated up to the present time, the churchyard being the usual place of interment, though, when the church is surrounded by houses, it is by no means a fit situation; for the putrid exhalations arising during the decomposition of animal bodies are injurious to health, and capable of giving rise to, or at least of encouraging, the progress of various pestilential diseases, of which the most common in this country are low nervous or typhus fevers. Thus the situation of cemeteries becomes an important consideration, in connexion with public health. The advantage, in point of salubrity, of having burial-places removed to some distance from large towns, is now beginning to be seen, and it is to be hoped that in a few years the practice of burying the dead in this country in the midst of crowded cities and in churches will entirely cease. Cemeteries should be placed on high ground, and to the north of habitations, so that southerly winds should not blow over the houses charged with the putrid exhalations; low wet places should be avoided, and care should be taken that bodies are not interred near wells or rivers from which people are supplied with water.

There are now many cemeteries in the neighbourhood of London, and also in the neighbourhood of other large towns in England.

The subject of interment possesses considerable interest in a legal point of view, for it is often of great importance to determine how long a body has lain in the ground; and by observing the changes which naturally take place in bodies at different stages of decomposition, it is possible in some cases to determine whether certain marks are the result of decomposition or the remains of injuries inflicted before death.

Of late years the subject of interment has attracted much attention in England, and a great amount of information has been collected. Though opinions are not unanimous, the evidence appears to prove that emanations from crowded burial-grounds and from the vaults of churches do injuriously affect the health of persons who live near them; and that these emanations, when sufficiently concentrated, may produce speedy death. The general "conclusion that all interments in churches or in towns are essentially of an injurious and dangerous tendency" (*Report on the Practice of Interment in Towns*), is at least made a strong probability, and strong enough, coupled with other reasons, to justify the legislature in forbidding such interments, and placing all burying grounds under such regulations as may prevent the effluvia from the dead from becoming detrimental to the health of the living. The Report to which reference has been made contains, in addition to the evidence on the injurious effects of crowded burial places, much valuable information on the injury to health caused, particularly among the poor, by the delay in interments. The following remark will show the nature and extent of this evil: "In a large proportion of cases in the metropolis and in some of the manufacturing districts, one room serves for one family of the labouring classes: it is their bed-room, their kitchen, their wash-house, their sitting-room, their dining-room; and, when they do not follow any out-door occupation, it is frequently their work-room and their shop. In this one room they are born, and live, and sleep, and die, amidst the other inmates." Among the poor in some parts of London the average time that a body is kept is about a week, which sometimes arises from inability to raise money for the funeral expenses, as well as other causes; and where there is only a single apartment, the dead and the living occupy it together. The injurious consequences to health from the presence of a dead body, sometimes in a state of rapid decomposition, in a small ill-ventilated apartment, and particularly when death has been the consequence of malignant disease, cannot be disputed; and the moral effect on the living is demoralizing. The expense

of funerals is another head which is examined in this Report, where it is well remarked that "the expense of interments, though it falls with the greatest severity on the poorest classes, acts as a most severe infliction on the middle classes of society" (p. 46). The cost of interment in London varies from 4*l.* for a labourer to 1000*l.* for a gentleman: for persons of the condition of a gentleman it is stated that 150*l.* would be a low average. But these charges do not include anything except the undertaker's bill. The account of the details of an expensive funeral, "which is strictly the heraldic array of a baronial funeral, the two men who stand at the doors being supposed to be the two porters of the castle, with their staves in black," &c., is ludicrous enough; but the disposition to laugh is checked by considering the pecuniary embarrassment which this absurd display often entails on the survivors.

The subject of interment, like many others relating to the economy of society, may at first sight not seem to require any particular attention on the part of the state. It may be said, let every man bury his dead as he best can, and as he chooses. With respect to the rich, the expense is an absurd waste of money, and the example is bad; with respect to the middling classes, it is a heavy burden; and to the poor, interment of their dead is often almost an impossibility. To diminish these expenses, to secure the decency of interment amongst all classes and particularly among the poor, and to prevent the contamination of the living by the dead, are objects well worthy of the attention of a legislator. The information collected in the Report above alluded to lays bare a revolting picture of moral and physical facts; but it is truly said, "General conclusions can only be distinctly made out from the various classes of particular facts, and the object being the suggestion of remedies and preventions, it were obviously as unbecoming to yield to disgusts or to evade the enumeration and calm consideration of these facts, as it would be in the physician or surgeon, in the performance of his duty with the like object, to shrink from the investigation of the most offensive manifestations of disease."

The Report makes a proximate estimate of the total expense of funerals in London, which, according to the estimate, amounts to 626,604*l.* per annum; and a like estimate of the expense of all the funerals in England and Wales in one year is 4,870,493*l.* This sum, enormous as it is, may be considered an under estimate. "The cost of the funerals of persons of rank and title varies from 1500*l.* to 1000*l.* or 800*l.* or less, as it is a town or country funeral. The expenses of the funerals of gentry of the better condition vary from 200*l.* to 400*l.*, and are stated to be seldom so low as 150*l.*" The average cost of funerals of persons of every rank above paupers in the metropolis may be taken at 14*l.* 16*s.* 9*d.* per head. But owing to circumstances, fully explained in the Report, even this lavish expenditure does not secure the proper and solemn discharge of the funeral ceremony, which in crowded and busy districts seems to be totally impracticable. It is fully shown that the expenses of funerals may be greatly reduced and the due performance of the religious ceremonies may be secured by other arrangements. The establishment of cemeteries by Joint Stock Companies has done something by diminishing the amount of interments in crowded places, but the expenses of interment have perhaps not been at all diminished by them.

The Report concludes (p. 197) with a summary of the evils which require remedies; and there is not one of the evils which has not been proved to exist. There may be difference of opinion as to the degree in which the evils exist; but none as to the existence itself. The remedies that are suggested for these evils appear to have been well considered, though, when an evil is ascertained to exist, people are not always agreed as to the best remedy. One of the proposed remedies, which involves many important considerations, and would probably meet with some opposition, is "that national cemeteries of a suitable description ought to be provided and maintained (as to the material arrangements) under the direc-

tion of officers duly qualified for the care of the public health." Another is, "that for the abatement of oppressive charges for funeral materials, decorations, and services, provision should be made (in conformity to successful examples abroad) by the officers having charge of the national cemeteries, for the supply of the requisite materials and services, securing to all classes, but especially to the poor, the means of respectable interment, at reduced and moderate prices, suitable to the state of the deceased and the condition of the survivors." The numerous matters contained in the Report can only be indicated here. It should be consulted by all who take an interest in the well-being of society, as a most valuable contribution to the statistics of civilized life.

(*A Supplementary Report on the Results of a Special Inquiry as to the Practice of Interment in Towns, made at the request of her Majesty's principal Secretary of State for the Home Department*, by Edwin Chadwick, Esq., Barrister-at-Law. London, 1843.)

INTERNATIONAL LAW. This term was originally applied by Bentham to what was previously called the "law of nations," and it has been generally received as a more apt designation than that which it superseded. When the term "law of nations" was in use, that of "law of peace and war" was sometimes employed as a synonyme, and as indicative of the boundaries of the subject. It was thus in its proper sense restricted to the disputes which governments might have with each other, and did not in general apply to questions between subjects of different states, arising out of the position of the states with regard to each other, or out of the divergences in the internal laws of the separate states. But under the more expressive designation, International Law, the whole of these subjects, intimately connected with each other as they will be found to be, can be comprehended and examined, and thus several arbitrary distinctions and exclusions are saved. To show how these subjects are interwoven, the following instances may be taken:—A port is put in a state of blockade; a vessel of war of a neutral power breaks the blockade: this is distinctly a question between nations, to be provided for by the law of peace and war, in as far as there are any consuetudinary rules on the subject, and the parties will submit to them. But suppose a merchant vessel belonging to a subject of a neutral power attempts an infringement of the blockade, and is seized—here there is no question between nations in the first place. The matter is adjudicated on in the country which has made the seizure, as absolutely and unconditionally as if it were a question of internal smuggling; and it will depend on the extent to which just rules guide the judicature of that country, and not on any question settled between contending powers, whether any respect will be paid to what the party can plead in his own favour, on the ground of the comity of nations, or otherwise. But there is a third class of cases most intimately linked with these latter, but which are completely independent of any treaties, declarations of war, or other acts by nations towards each other. They arise entirely out of the internal laws of the respective nations of the world, in as far as they differ from each other. The "conflict of laws" is a term very generally applied to this branch of international law, and the circumstances in which it comes into operation are when the judicial settlement of the question takes place in one country, but some of the circumstances of which cognizance had to be taken have occurred in some other country where the law applicable to the matter is different. One of the most common illustrations of this subject is,—a judicial inquiry in England whether a marriage has taken place in Scotland according to the law of that country; or an inquiry in Scotland whether a marriage has taken place according to the law of England; in either of which cases there will generally be the farther and nicer question, Which country's law ought to prevail as the criterion?

Thus the three leading departments of international law are—

1. The principles that should regulate the conduct of states to each other.

2. The principles that should regulate the rights and obligations of private par-

ties, arising out of the conduct of states to each other.

3. The principles that should regulate the rights and obligations of private parties, when they are affected by the separate internal codes of distinct nations.

The First of these has been the principal subject of the well-known works of Grotius, Puffendorf, Vattel, and other publicists, who have derived from general principles of morality and justice a series of minute abstract rules for the conduct of nations towards each other, and subsidiarily for the conduct of their subjects in relation to international questions. It has been usual to call this department the "Law of Nature," as well as the Law of Nations, on the supposition that, though it has not the support of the authority of any legislature, it is founded on the universal principles of natural justice.

It is clear that thus in its large features, as a rule for the conduct of independent communities towards each other, the law of nations wants one essential feature of that which is entitled to the term law—a binding authority. Nations even the most powerful are not without checks in the fear of raising hostile combinations and otherwise; but there can be no uniformity in these checks; and in general when the interest is of overwhelming importance, and the nation powerful, it takes its own way. The importance of the questions which may be involved in the law of nations thus materially affects the question how far it is uniformly obeyed. In a set of minor questions—such as the safety of the persons of ambassadors, and their exemption from responsibility to the laws of the country to which they are accredited, and in other matters of personal etiquette, a set of uniform rules has been established by the practice of all the civilized world, which are rarely infringed. But in the more important questions, regarding what is a justifiable ground for declaring war? what territory a nation is entitled to the sovereignty of? what is a legitimate method of conducting a war once commenced? &c.—the rules of the publicists are often precise enough; but the practice of nations has been far from regular, and has been, as every reader of history knows, influenced by the relative strength of the disputing parties more than by the justice of their cause. The later writers on this subject have from this circumstance directed their attention more to the means by which any system of international law can be enforced, than to minute and abstract statements of what may be theoretical justice, but has little chance of being enforced. They have found several circumstances which have an influence in the preservation of international justice, though of course no sanctions which can give it the uniformity and consistency of internal laws. The combinations for the preservation of what is called the Balance of Power [BALANCE OF POWER] are among the most useful restrictions of ambition. All periods of history furnish illustrations of this principle. Hume found that the Peloponnesian war was carried on for the preservation of the balance of power against Athens. The late war exhibited a noted illustration of combination to prevent universal conquest on the part of the French. The safety of small states from being absorbed by their larger neighbours, is in the jealousy which these neighbours feel of each other's aggrandisement. Thus the jealousy of rulers is one barrier to national injustice. Another is public opinion: sometimes that of the nation whose rulers would be prepared to commit injustice—sometimes that of other nations. Of course it can only be to a very limited extent that the public feeling of a despotic government can check the grasping spirit of its rulers; but the public feeling of the constitutional and democratic states is the great check on the injustice that might be perpetrated by a nation when it becomes so powerful as Great Britain.

The seizure of the Danish fleet by the English has been a subject of warm censure in this country. Necessity—even the plea that Napoleon would have used the fleet to invade our own shores—has not been accepted in palliation of the act; and the manner in which it has been canvassed is very likely to prevent any British government from adopting the precedent. The partition of Poland is

an instance of national injustice condemned by the public feeling of countries other than those by which it was perpetrated; and it may be questioned whethe states which accomplished the partition may not yet suffer by it. Good fame in the community of nations is like respectability in private circles, a source of power through external support; and the conduct of Russia towards Poland has frequently diverted from the former country the sympathy of free nations. It need scarcely be observed that the press, whether fugitive or permanent, is the most powerful organ of this public opinion, and that the views of able historians, jurists, and moralists, have much influence in the preservation of international justice. Among the principal subjects of dispute in this department of international law are—the sovereignty of territory and the proper boundaries of states, as in the puestion lately under debate regarding the Oregon territory in North America; questions as to discovery and first occupancy of barbarous countries; questions as to any exclusive right to frequent certain seas,—and here there is a well-known distinction between the broad ocean and the narrow seas that lie close to particular territories; questions regarding the right of navigation in rivers which may be either between the upper and lower territories, or between states on opposite banks; questions as to the right of harbour or fishing, &c.; and questions as to the right of trading with particular states. A very advantageous method of adjusting minor international disputes has been frequently had recourse to of late in a submission to the arbitration of a neutral power. Pride and the spirit of not yielding to intimidation or aggrandisement have often more influence in a nation's resistance of another's claim, than the desire to keep what is demanded. In such a case the national pride is not injured when that which is yielded to is the award of a neutral party, not the demand of an opponent. It has been suggested by Bentham and Mill that the civilized states of the world should establish among themselves a congress, which should adjudicate on all disputes between its members, the members being excluded from voting in their own disputes.

The Second department into which we have considered international law divided —the rights and obligations of individuals as affected by the conduct of states towards each other—has, like the first, been examined by the publicists in their theoretical manner; but it has never, perhaps, received so much practical illustration as it did in the British courts, particularly the Prize Admiralty Court, during the late wars. In a despotic country it would of course scarcely ever occur that the bench should fail to give effect to the national policy of the government, whatever that may be. But in England it was the rule that foreigners as well as natives were entitled to the rigid administration of the law, and that, if the proceedings of the government were at variance with the rights of parties according to the law of peace and war, individuals might have redress. Thus, when Great Britain, in opposition to the Berlin decrees, tried to establish a "paper blockade," that is to say, by force of orders in council to declare places to be under blockade, whether there were a force present to support it or not, Sir William Scott found that "in the very notion of a complete blockade, it is included that the besieging force can apply its power to every point in the blockaded state. If it cannot, it is no blockade of that quarter where its power cannot be brought to bear."

It has frequently been observed, that as to all departments of the law of nations, uncivilized countries are at the mercy of the civilized: that not having any means of reciprocating the action of international laws, from their having no systematic judicatories of their own, they have not even the frail tenure of generally received opinions as to what the conduct of independent nations towards each other ought to be, for their protection. This is in some measure true. If a weak civilized nation, which can eloquently appeal to the law of nations, is feebly protected against the injustice of a strong nation, still less effectually are a barbarous community, who never heard of international law, and know not how

to appeal to its acknowledged principles, protected by it; and, in regard to them, the humanity and conscience of the powerful nations coming in contact with them are their protection, rather than any rules of international law. Thus when, as in the instance of a colonial government or otherwise, such a nation as the British has to deal with the inhabitants of a barbarous country, it cannot be said that these inhabitants have the law of nations to appeal to if they are unjustly treated, and there is no sanction for their being well and humanely used but the morality and conscience of the British nation and its government. How far civilized nations had in former times disregarded all feelings of common humanity in their intercourse with inferior races, the history of colonization, and especially that relating to the continent of America, is a horrible record. In later days higher notions have been entertained of the responsibility of superior power, and the civilized man has in some measure ceased to make his first advances to the notice of the barbarian in the character of a murderer and a pillager. Britain has in this improved morality so far advanced before other nations, as to be the protector of barbarous races from the oppression of others, in her efforts for the abolition of the slave trade and the preservation of aboriginal nations. These efforts, in so far as they are an anomaly in the general conduct of nations, have introduced some necessary exceptions to the rules of international law applicable to the rights of persons. This has consisted in the necessity of treating those who are injured by the slave trade, viz. the slaves carried off, as if they were subjects of this country subjected to injury, while the deporters have likewise been of necessity treated in the general case as if they were subjects of this country doing the injury. The effect of this state of matters, as an exceptional principle in international law, was lately curiously illustrated. A foreign slaver had been captured and taken possession of. The crew rose, and putting the captors to death, recaptured the vessel. They were tried and condemned to death for murder in an English court; which refused to listen to the plea that, as the capture had taken place under our laws, not their laws, they were entitled to regain possession by any means which they might choose to adopt. It was necessary, in fact, to treat the ship as a prison, and the captured seamen as persons in a British prison. It is fortunate that the humane and enlightened motive of this divergence from the law of nations is a guarantee for its being beneficially exercised.

The rights of individuals have sometimes been so much affected by the conduct of nations towards each other, that their own nation has been induced to make war against the nation aggressing. This has twice occurred in our intercourse with America: one war was caused by our restrictions on the commerce of America by the orders in council; another by our searching American merchant vessels for British seamen. On the subject of the present unsatisfactory state of the question as to this right of search, Mr. Reddie, in his 'Maritime International Law' (ii. pp. 43-44), says, "Unfortunately this claim of right was left undecided either way even by the hastily concluded treaty of Ghent in 1814, which terminated the war between the parent state and what were originally her colonies. And as the divergence in the personal appearance, language, habits, and manners of the inhabitants of the two countries was not likely, for generations, to be such as to facilitate the discrimination of the subjects of the two states, it is to be regretted the question was not subsequently settled by the negotiations of 1818 upon the equitable footing of regular authentic lists or registers of British and American seamen being made up and kept, and of the nationality of the seamen being thereby determined."

The Third division of international law is that which most properly comes under the head "Conflict of Laws," viz. the principles that should regulate the rights and obligations of private parties when they are affected by the separate internal codes of distinct nations. This has some points in common with the preceding department of the subject. It involves questions with individuals, and not, at least in the first instance, questions with states-

and the adjustment of each question depends on the view taken by the law of the country to which the individual or his property is amenable. But it has this distinctive feature, that the circumstances under which disputes may arise are not in the conduct of one nation towards another, but in differences between the internal laws of the countries, which internal laws disagree, not because the one nation has a dispute with the other, but in the general case because its legislators have taken its internal situation solely into consideration, and have overlooked the existence of other nations. There can be no part of the world where this species of international law can be so well illustrated as in the United States—a collection of communities, each having an internal system of administration, but each acting on principles of harmony and alliance with the other states of the Union. It is thus natural that America should have produced the best work on the subject, in Professor Story's 'Commentaries on the Conflict of Laws Foreign and Domestic, in regard to Contracts, Rights, and Remedies; and especially in regard to Marriages, Divorces, Wills, Successions, and Judgments,' of which two editions are now known and esteemed in this country. The leading rule of international law in this department is, that each civilised nation is to give efficacy to the laws of another country, unless its own laws or the general principles of justice are thereby invaded. We have the broadest and most distinct illustrations of this rule in the criminal law. The progress of opinion has lately been in favour of each nation rendering back fugitive criminals, to be dealt with according to the law of the country where they have committed any private crime against person or property. In conformity with this principle, treaties were lately made with France and the United States of America, for enforcing which, in this country, two acts of parliament were passed (6 & 7 Vict. c. 75 and c. 76), by which a secretary of state, on the requisition of the ambassador or other representative of France or the United States, might issue a warrant to magistrates to seize a person accused of a crime, a magistrate being enjoined to put it in force on his being satisfied that the charge is of such a nature as would authorise him to commit a person charged with perpetrating it in his own jurisdiction. [CONVENTION TREATIES.] But it has been a rule in many countries, and particularly in our own, that no aid is to be given for the enforcement of the political laws of foreign states. As in other branches of international law, our enlightened principles on the subject of slavery have here been the cause of perplexing difficulties. With slave-holding countries slavery comes to be a question of property, but with us it can only be a question of government; and we cannot view any rules regarding property in slaves as laws relating to private rights, an infringement of which, when held to be criminal in the slave-holding country, must be so also here. Accordingly, in the celebrated case of the Creole, in November, 1841, when certain American slaves escaped and found protection in a British settlement, it was found that we could not send them back to their owners as robbers who had with violence stolen their own persons from the custody of their proprietors.

As on the one hand the criminal law is that to which this department of international law most broadly and distinctly applies, on the other hand the position of real or landed property is that to which it has generally the least reference. The reasons of this distinction are very obvious: his own personal conduct is that object of the law which a man most completely carries about from one country to another; his connection with landed property is the relation in which a tribunal out of the country in which the property is, can have the least chance of adjudicating. Between these extremes there are many questions regarding persons in their relations to each other, and regarding contracts as to moveable or personal property. It came thus to be a general principle, that rights connected with landed property must always be settled by the law of the place where the land lies, while questions regarding other property might be subjected to other criterions of jurisdiction. Perhaps historical circum-

stances in the early history of the European nations favoured this division. The various tribes which occupied the territory of the Roman empire appear to have carried with them their own peculiar laws and customs. Savigny quotes a letter from Bishop Agobardus, in which he says it often happens that five men, each under a different law, may be found walking or sitting together—a state of society at this day exemplified in some oriental nations. Among all these distinct tribes the feudal system arose as the general and uniform territorial law. Through a series of circumstances which need not be here narrated, the civil or Roman law became the ruling principle as to persons in their relation to each other when that relation was not of a feudal character, and as to claims regarding moveable goods. The common law of England has perhaps had the least affinity with the other European codes. But it has fortunately happened that those departments of the law with which international questions are chiefly concerned,—the consistorial and the admiralty law,—have been considered as the legitimate offspring of the civil law, and have adopted in a great measure its principles as they have been in practice throughout Europe. The mercantile law in general of England has accommodated itself to the custom of merchants; and this custom has in a great measure arisen out of the adaptation to modern commerce of the principles of the civil law. The portion of the commercial code of England which is least in harmony with that of other countries is perhaps the bankruptcy law, which, being statutory, has not so pliantly adapted itself to the exigencies of foreign commerce as the consuetudinary portions of the commercial law have done. Thus, under the old sequestration or bankruptcy statute of Scotland, which was supposed to give the trustee or assignee full power for obtaining possession of the bankrupt's property in all parts of the world, it was found that he had no right of action for a debt due to the bankrupt in England—the right of the trustee being that of an assignee merely, and a right to a debt being a chose in action, and therefore not capable of being assigned by the law of England. See Jeffrey *v.* M'Taggart, 6 M. & S. (K. B.), 126. The law of bankruptcy appears to be one of the most difficult of adjustment to international principles. There are clauses in the bankruptcy and insolvency acts of England by which, through registration of the vesting order, the assignee becomes invested with all real or landed property in any part of the British dominions where a conveyance of such property requires to be recorded. (See 1 & 2 Wm. IV. c. 56, § 27, and 1 & 2 Vict. c. 110, § 46.) It could not have been the intention of this provision to give an English assignee privileges which a trustee of a bankrupt estate does not hold in Scotland; but while the latter requires to make up a feudal title before he can be the recorded proprietor of real property, it was found by the Court of Session in the strict interpretation of the English provision that no such preliminary was necessary, and that the registration of the vesting order was sufficient. (Rattray *v.* White, 8th March, 1842, 4 D., 880.)

The conflicts of laws between England and Scotland are of course in this part of the world the most important and interesting. The consuetudinary or unstatutory law of England has perhaps fewer principles in common with that of Scotland than the latter has with the law of any other country in Europe; and this divergency has been the cause of many difficult questions. In these the law of marriage and that of succession have been particularly fertile. In the former the difference between the institutions of the two countries, when subjected to the principles of international law, has been productive of very remarkable effects. In England there are certain acts which are necessary ingredients, by the statute law, of a valid marriage. In Scotland the consent of parties to hold each other as man and wife, when sufficiently attested, is, according to the doctrines of the civilians, sufficient. But in England it is a principle of international law that a marriage valid in the place where it is contracted is valid there; the consequence is, that the lax principle of marriage by simple attested consent would

have probably fallen into desuetude and oblivion in Scotland, were it not kept up by English parties, who thus evade the restrictions of their own law. On the subject of succession, a series of decisions in both countries has settled two very important principles—that in the case of landed property it follows the *lex rei sitæ*, or the law of the place where the property is; while in moveable or personal property it follows the *lex domicilii*, or law of the domicile in which the person leaving it died.

INTESTACY. [ADMINISTRATION.]
INVENTION. [PATENT.]
INVENTORY. [EXECUTOR.]
INVESTITURE. [FEUDAL SYSTEM.]

IRON. The iron trade in Great Britain in all its various branches is of very great importance. According to the census of 1841 there were employed in Great Britain 10,949 persons in iron-mines, and 29,497 in the smelting of the ore and the manufacture of the metal. The quantity of iron made in this country at different periods is not accurately known, but the following estimates have generally been considered as not far from the truth by those best acquainted with the subject. The estimate for 1823 and each subsequent year is given on the authority of Sir John Guest, one of the greatest ironmasters in this country:—

	Tons produced.		Tons produced.
1740	17,000	1825	581,000
1788	68,000	1828	703,000
1796	125,000	1835	1.000,000
1806	258,000	1836	1,200,000
1823	452,000	1840	1,500,000

The next table, which shows the parts of Great Britain in which the manufacture of iron was carried on in 1840, and the quantity made in each district, is taken from the evidence given by Mr. Jessop, of the Butterley Ironworks, Derbyshire, before the Commons' Committee on Import Duties in 1840:

	Tons.
Forest of Dean	15,500
South Wales	505,000
North Wales	26,500
Northumberland	11,000
Carried forward	558,000
Brought forward	558,000
Yorkshire	56,000
Derbyshire	31,000
North Staffordshire	20,500
South Staffordshire	407,150
Shropshire	82,750
Scotland	241,000
	1,396,400

The number of furnaces in blast was 402, and 162 used the process of blasting with hot air. Mr. Jessop estimated the quantity of coal used in smelting at 4,877,000 tons, and an additional quantity of 2,000,000 tons, was used in converting the produce of the ore into wrought-iron.

The price of pig-iron has fluctuated during the ten years from 1835 to 1845 between the two extremes of 6*l.* 13*s.* per ton in 1836 and 2*l.* 5*s.* in January, 1843.

About 16,000 tons of foreign iron are annually imported, principally from Sweden, Norway, and Russia. It is used for converting into steel, for which it is better adapted than the English coal-smelted iron.

The quantity of iron and steel, wrought and unwrought, exported in 1843 was 448,925 tons, declared value 2,590,833*l.* In 1844 the declared value of iron and steel exported amounted to 3,194,901*l.* There are in addition about 17,000 or 18,000 tons of hardware and cutlery exported. Mr. Porter estimated the home consumption of British iron in 1841 at 1,139,111 tons. (*Progress of the Nation*, iii. 87.)

The principal countries to which bar-iron and pig-iron were exported in 1842, were as under:—

	Bar-Iron. Tons.	Pig-Iron. Tons.
United States of North America	39,964	13,075
Italy	19,854	3,174
Germany	17,783	6,246
E. I. Company's Territories and Ceylon	17,017	240
Holland	16,980	26,666
Prussia	13,202	12,564
Denmark	6,227	7,573
Turkey and Continental Greece	5,191	. .
Carried forward	136,218	69,538

	Bar Iron. Tons.	Pig Iron. Tons.
Brought forward .	136,218	69,538
British N. America .	4,971	3,199
France . . .	4,566	16,464
Foreign W. Indies .	3,084	20
All other countries .	33,540	4,636
Total	172,379	93,851

The quantities of other descriptions of iron and steel exported in the same year were:—

	Tons.
Bolt and Rod Iron . . .	18,921
Cast Iron	15,934
Iron Wire	1,611
Anchors, Grapnels, &c. . .	2,693
Hoops	14,914
Nails	6,000
Other sorts	35,891
Old iron, for re-manufacture	3,890
Unwrought Steel . . .	3,308

The total weight of iron and steel wrought and unwrought (exclusive of hardware and cutlery) exported in 1842 was 369,398 tons, valued at 2,457,717*l.*

In 1841 there were smelting-works in 59 different departments of France, and in 20 other departments the making of pig and bar iron was carried on from ore obtained out of the departments. One half of all the iron made in France in 1841 was produced in the nine departments of Haute Marne, Moselle, Côte d'Or, Loire, Nièvre, Ardennes, Cher, Haute Saône, and Meuse. Five-sevenths of all the iron is produced in eighteen departments, and the remaining two-sevenths are distributed amongst 61 departments. The number of smelting-works, and works for making bar-iron, increased from 894 in 1836 to 1023 in 1841. In the Haute Marne, where the iron-works are on the largest scale, 86 establishments produced iron valued at 479,349*l.* The total value of all the iron manufactured in France in 1841 was estimated at 5,671,581*l.*, which was an increase of 14 per cent. since 1836. The fuel used was 594,418 tons of wood-charcoal, 175,924 tons of coke, 349,276 tons of coal, and 176,659 stères of wood; and the total products were 377,142 tons of cast-iron, 263,747 tons of bar-iron, and 6886 tons of steel. The value of the fuel consumed amounted to 2,179,664*l.*, or 38½ per cent. on the value of the metal. The number of workmen employed (including 15,783 miners) was 47,830, which is more than the number employed in Great Britain, while the quantity of iron made in France is only one-fourth of that made in England. The price of pig-iron in France was 6*l.* 11*s.* per ton in 1841, and that of bar-iron 15*l.* 13*s.* The iron manufacture is, in fact, a very oppressive monopoly in France, and is especially injurious to the agricultural class. The country is not half supplied by the French iron-masters; enormous duties prevent the supply of foreign iron, and scarcely 50,000 tons are imported annually; and the French submit to the injustice of paying prices which are from 100 to 200 per cent. higher than the same article costs in England. (*Jour. of Lond. Stat. Soc.*, vol. vii. 282-291. Paper by G. R. Porter, Esq., on the Mining Industry of France.)

In Belgium the iron-mines are principally situated between the Sambre and the Meuse, and in the province of Liège. The produce when smelted amounted in 1836 to 150,000 tons.

In 1837 the iron-mines of Prussia produced 679,874 tons.

The iron of Sweden is deservedly held in high estimation. The number of smelting furnaces, great and small, in Sweden, is under 350. The annual produce is estimated at from 85,000 to 95,000 tons of pig-iron, which is capable of being converted into from 60,000 to 66,000 tons of malleable iron. An iron-master can send no more iron to market than the quantity which he is authorised by his licence to produce. Each furnace and forge pays an annual tax; and no licence is granted to any one who has not a forest sufficient to supply the necessary charcoal. (M'Gregor's *Commercial Statistics*, ii. 882.)

The following particulars respecting the iron manufacture of the United States of North America are from Hunt's 'Merchants' Magazine,' a work of authority on commercial statistics. There are 540 blast furnaces, which yield 486,000 tons of pig-iron; 954 bloomeries, forges,

rolling and splitting mills, &c., which produce 291,600 tons of bar, hoop, sheet, and other wrought iron, 30,000 tons blooms, and 121,500 tons as cuttings, such as machinery, stove-plates. Two-fifths of all the iron made in the States is produced in Pennsylvania. The total quantity is rather more than the produce of Great Britain in 1823. The probability is, that in the course of another quarter of a century the United States will be the greatest iron-producing country in the world. The duty on foreign iron varies from 50 to 150 per cent. and the quantity imported is about 100,000 tons per annum. The price of American bar-iron in 1845 was from 75 to 80 dollars per ton. The price in England, with a large prospective demand, was under 9*l.* per ton.

J.

JACOBINS is the name of a faction which exercised a great influence on the events of the French Revolution. This faction originated in a political club formed at Versailles, about the time of the meeting of the first National Assembly, and which was composed chiefly of deputies from Brittany, who were most determined against the court and the old monarchy, and some also from the South of France, among whom was Mirabeau. When the National Assembly removed its sittings to Paris (October 19, 1789), the Breton club followed it, and soon after established their meetings in the lately suppressed convent of the Jacobins, or Dominican monks, in the Rue St. Honoré. From this circumstance the club and the powerful party which grew from it assumed the name of Jacobins. During the year 1790 the club increased its numbers by admitting many men known for violent principles, which tended not to the establishment of a constitutional throne, but to the subversion of the monarchy. A schism broke out between these and the original Jacobins, upon which Danton, Marat, and other revolutionists seceded from the club, and formed themselves into a separate club called 'Les Cordeliers,' from their meetings being held in a suppressed convent of Franciscan friars. These men openly advocated massacre, proscription, and confiscation, as the means of establishing the sovereignty of the people. In 1791 the Cordeliers reunited themselves with the Jacobin club, from which they expelled the less fanatical members, such as Louis Stanislas Freron, Legendre, and others. From that time, and especially in the following year, 1792, the Jacobin club assumed the ascendancy over the legislature; and the measures previously discussed and carried in the club were forced upon the assembly by the votes of the numerous Jacobin members, and by the out-door influence of the pikemen of the suburbs, with whom the club was in close connection. The attack on the Tuileries in August, 1792, the massacres of the following September, the suppression of royalty, and most of the measures of the reign of terror, originated with the club of the Jacobins. [COMMITTEE OF PUBLIC SAFETY.] The club had affiliations all over France. After the fall of Robespierre in July, 1794, the convention passed a resolution which forbade all popular assemblies to interfere with the deliberations of the legislature. The Jacobins, however, having attempted an insurrection in November, 1794, in order to save one of their members, Carrier, who had been condemned to death for his atrocities at Nantes, the convention ordered the club to be shut up; and Legendre, one of its former members, proceeded with an armed force to dissolve the meeting, and closed the hall. The spirit of the club, however, survived in its numerous adherents, and continued to struggle against the legislature and the Executive Directory, until Bonaparte put an end to all factions, and restored order in France. The name of Jacobin has since been used, though often improperly, like other party names, to denote men of extreme democratical principles, who wish for the subversion of kingly government and of all social distinctions, and are not over-scrupulous about the means of effecting their object.

JETSAM. [FLOTSAM.]

JEWS. It does not appear at what time the Jews came into Great Britain,

but they were settled here in the Saxon period, and as early as A.D. 750. From the time of the Conquest the Jews in England rapidly increased in number. Under the first three Norman kings they lived undisturbed, so far as we are informed. But under Stephen and his successors they suffered from the rapacity of the kings and the intolerance of the people. The persecutions which they experienced from all persons, both lay and ecclesiastic, poor and rich, are fully attested by the evidence of their enemies. Finally, in the reign of Edward I., about A.D. 1290, all the Jews were banished from the kingdom. Their numbers at that time are conjectured (but on what grounds we are not aware) to have been between 15,000 and 16,000. It was not till after the Restoration, A.D. 1660, that the Jews again settled in England; and though under the Protectorate they had entered into negotiations with Cromwell to obtain permission to enter the island, nothing seems to have been done in the matter, and those who have investigated the subject bring forward no proof of leave being formally granted to them to return. After the Restoration it seems probable that they came in gradually without either permission or opposition, and since that time foreign Jews have been on the same footing as other aliens with respect to entering the country. In the reign of Queen Anne (1 Anne, c. 30) an act was passed, by which, "if any Jewish parent, in order to the compelling of his or her Protestant child to change his or her religion, shall refuse to allow such child a fitting maintenance, suitable to the degree and ability of such parent, and to the age and education of such child," the Lord Chancellor, upon complaint made to him, shall make such order for the maintenance of such Protestant child as he shall think fit. In the year 1753 an act was passed to enable foreign Jews to be naturalized without taking the sacrament; but the act was repealed in the following session, under the influence of the popular feeling, which was most strongly opposed to the measure of 1753. Since this year they have lived in the United Kingdom unmolested. In 1830 the number of Jews in London was estimated at 18,000, and in the rest of England about 9000. But since the act for the registration of marriages, &c. was passed, and the number of marriages among the Jews is accurately ascertained, we know that this calculation was too high; and if the proportion of marriages amongst the Jews is the same as amongst other portions of the population, the number of Jews in England and Wales in 1843 was only 18,700. The number in Scotland and Ireland is probably small, but we are not aware that there is any good estimate as to their numbers in these parts of the United Kingdom.

During their residence in England, up to their banishment in the time of Edward I., the Jews were considered as the villains and bondsmen of the king, a relation which seems to explain the power over their persons and property which was assumed and exercised by the king in the most oppressive manner. They however could purchase and hold land, subject only to the right of the king, whatever it might be, to levy heavy taxes on them and seize their lands if they were not paid. By the statute of the 54th and 55th of Henry III. the Jews were declared incapable of purchasing or taking a freehold interest in land, but might hold, as in time past they were accustomed to hold, houses in the cities, boroughs, and towns where they resided. Another statute (Statutum de Judaismo), 3 Edward I., forbade Jews from alienating in fee, either to Jew or Christian, any houses, rents, or tenements which they then had, or disposing of them in any way without the king's consent; they were permitted to purchase houses and curtilages in the cities and boroughs where they then resided, provided they held them in chief of the king; and they were further permitted to take lands to farm for any term not exceeding ten years; such permission, however, was not to continue in force for more than fifteen years from the date of the act. Since the time of their banishment no statute has been passed which in direct terms affects the right of the Jews to hold real estates in England, and it has been a matter of dispute whether they can now legally

hold such estate. It has been contended that the statute called the 54th and 55th Henry III. is not an act of parliament, but only an ordinance of the king, which, however, to say the least, seems a very questionable proposition. But all doubt on this point, together with the property disabilities noticed above under Edward I. and Henry III. have been removed by an act of 1846, the 9 & 10 Vict. c. 59, under which statute the Jews are enabled to hold lands, and to alienate any real property they possess without leave of the king.

The act of the 9th Geo. IV. c. 17 substitutes for the sacramental test a form of declaration to be made by every person, within one calendar month next before or upon his admission into any of the corporate offices mentioned in that act, or within six calendar months after his appointment to any place mentioned in the fifth section of that act. As this declaration contains the words "upon the true faith of a Christian," it has the effect of excluding Jews from corporate offices, and, in connection with the Abjuration Act, from places under government, so far as they are not relieved by the Annual Indemnity Act. The abjuration oath, which contains the same words, has the effect of excluding the Jews from parliament. (1 Geo. I. st. ii. c. 13; 6 Geo. III. c. 53.) But in 1845 an act was passed (8 & 9 Vict. c. 52), by which, instead of the declaration required to be made by 9 Geo. IV. c. 17, every person of the Jewish religion is permitted to make and subscribe another declaration, of which a form is given in the act, within one calendar month next before or upon his admission into the office of mayor, alderman, recorder, bailiff, common councilman, councillor, chamberlain, treasurer, town-clerk, or any other municipal office in any city, town corporate, or borough in England. The declaration, instead of the words "upon the true faith of a Christian," runs in this form: "I, A. B., being a person professing the Jewish religion, having conscientious scruples against subscribing the declaration contained in an act, &c. (referring to the 9 Geo. IV. c. 17), do solemnly, sincerely, and truly declare, that," &c. [JUSTICES OF THE PEACE, p. 154.]

It has been considered to be the law till the present, that all gifts for the support of the Jewish religion were void, as being what are legally termed superstitious uses. There is a singular decision by Lord Hardwick (Ambler's *Reports*) in the case of a gift for the support of the Jewish religion. Part of the money intended by the Jewish donor to support his own creed was given to the Foundling Hospital. But these legal exceptions are also abrogated by the 9 & 10 Vict. c. 59, and Jews, with the rest of the community, are free to endow schools and other charitable foundations. Neither are they any longer obliged to maintain such of their children as may become Protestants: and further, the law is repealed that prescribed to them to wear a badge of yellow taffeta. It is a vulgar error, still entertained by some, that Jews, even if born in this country, are aliens. Jews are British subjects, like any other persons who are born here.

(Blunt's *History of the Establishment and Residence of the Jews in England, with an Enquiry into their Civil Disabilities*, London, 1830; Goldsmid's *Remarks on the Civil Disabilities of British Jews*, London, 1830; *Report of the Criminal Law Commissioners, on Penalties and Disabilities in regard to Religious Opinions*, 1845. This report states also the law as to Jews in Ireland and Scotland.)

JOINT-STOCK COMPANY. Joint-stock companies are such companies as are unincorporated, and which trade upon a joint stock. All trading associations, however numerous, and although not established by charter or act of parliament, are legal, provided their purposes be legal, and provided they do not attempt to exercise the privileges of a corporation, such as the power of making their shares transferable at the will of the holder. The partners in joint-stock companies are of two classes: one consists of directors, trustees, and others who are actively employed in conducting the concern; the other, of a number of persons who take little or no part in its management, and many of whom become shareholders for the sake only of a profitable

investment of their money. The general conduct of the trade falls upon the directors, while the more particular transactions are usually managed by paid agents who are not shareholders. The funds and other property of the company are vested in the trustees. The deed of settlement is a covenant made between a few of the shareholders chosen as trustees for that purpose, and the others; by which each of the latter covenants with the trustees, and each of the trustees covenants with the rest of the shareholders, for the due performance of a series of articles which are specifically set forth, and which point out the duties of the trustees, directors, and auditors; define their powers, and all other necessary matters. In all matters which might have been provided by the deed, but are not, the law of partnership prevails.

The private property, to its full extent, of every member of an unincorporated trading company is liable for the whole debts of the company. The most important object to be gained by an act of parliament for a joint-stock company, is by the clause which enables it to sue and be sued through the medium of one of its officers; without which advantage the difficulties attendant upon suits by or against such companies are beyond calculation.

A partnership in the working of a mine is considered by courts of equity as a partnership in a trade, and therefore subject to the usual rules as to partnership.

The chief rules of Roman law as to partnership may be collected from Gaius, iii. 148-154; *Dig.*, xvii. tit. 2; Cicero, *Pro Publio Quintio.*

The constitution and regulation of joint-stock companies have been more particularly defined by several recent statutes.

The act 7 & 8 Vict. c. 110, applies to companies formed subsequent to 1st Nov. 1844, which consist of more than twenty-five members, provided they are not constituted by charter or by act of parliament. The most important feature of the act consists of provisions for subjecting joint-stock companies to certain regulations while in their provisionary state, and before operations have been commenced. It is required that before any public advertisement of an intended joint-stock company be issued, the promoters are to effect a "provisional registration" at an office established for the purpose, which registration must set forth the name and nature of the proposed company, the names, occupations, and places of abode of the promoters and officers, the names of subscribers, with various other particulars; and copies of each prospectus must be deposited before being issued. There is a penalty for issuing advertisements which falsely pretend that any joint-stock project is patronized, directed, or managed by eminent or opulent persons.

When the company is formed a "complete registration" is to be made, and until this is effected, all their proceedings are of a provisionary character. The "complete registration" is accomplished by sending in schedules which give full particulars respecting the constitution of the company. Every shareholder must enter into a covenant to pay up instalments; the deed is to be registered; accounts are to be audited, and balance-sheets made and produced to the shareholders, yearly, and the right of the shareholders to examine the books for a certain time must be granted. The balance-sheet and auditors' reports are also to be annually registered. The act imposes other conditions on joint-stock companies, amongst which are the following: shareholders whose instalments are all paid, have a right to be present at all general meetings, and to take part in the discussions; to vote on any question, either in person or by proxy, unless the deed of settlement precludes proxies; and they have a vote in the choice of electors and auditors. Patrons and directors must hold shares in the company under a penalty of 20*l.* A "register of shareholders" is to be kept which must show the number and amount of shares held by each shareholder: each shareholder has a right to inspect this register on demand; and he is entitled to a certificate of the number of shares which he holds, and the amount paid thereon, which certificate may be evidence in a court of law. When completely registered, shares may be transferred, but all the instalments due must first be paid up, and the

transfer must be registered before the holder is entitled to share in the profits or to vote. The act contains a number of other regulations. The registrar of joint-stock companies is required to make an annual report, which is to be presented to parliament. This act does not apply to joint-stock banks, nor to schools or scientific and literary institutions; nor to loan or benefit building societies duly enrolled, nor to friendly societies or similar institutions, unless they assure to the amount of 200*l.* on any one life. The act does not extend to companies in Scotland, except they have branch establishments in England or Ireland.

In the same session another act was passed (7 & 8 Vict. c. 111) which is entitled 'An Act for facilitating the winding up the affairs of joint-stock companies unable to meet their pecuniary engagements.' By this act a fiat in bankruptcy may be issued in the same way as in the case of single traders against incorporated commercial or trading companies or any other body of persons associated together for commercial or trading purposes; but the bankruptcy of a company does not involve the bankruptcy of any member individually. A copy of the balance sheet must be sent to the Board of Trade, accompanied by the written opinion of the Court of Bankruptcy as to the cause of failure of the company; and the Queen, upon the recommendation of the Board of Trade, may then revoke any privileges granted to the company, and determine the same, notwithstanding any charter, letters-patent, or act of parliament; but until the determination of the company by the crown, it shall be considered as subsisting for the original purposes. This act applies to all banking companies which have more than six partners.

Another act (7 & 8 Vict. c. 113) was passed during the session of 1844, under which joint-stock banks are now regulated. Every new joint-stock bank before it can commence business is required to present a petition to her majesty in council, signed by at least 7 shareholders, praying for a grant of letters-patent. This petition must set forth—1, The names and abodes of all the partners of the proposed company. 2, The proposed name of the Bank. 3, The place and street, &c., where the business of the bank is to be carried on. 4, The proposed amount of the capital stock, not being in any case less than 100,000*l.* and the means by which it is to be raised. 5, The amount of capital stock then paid up, and where and how invested. 6, The proposed number of shares. 7, The amount of each share not being less than 100*l.* each. The petition of the proposed company, in which these particulars are set forth, will be referred to the Board of Trade, which will report as to the provisions of the act having been complied with; and her majesty may then, if she so think fit, grant the letters-patent prayed for. The deed of partnership must be drawn up in accordance with a form approved of by the Board of Trade, and, in addition to any other provisions which may be introduced, must contain specific provisions for the following purposes. 1, For holding ordinary general meetings at least once a year, at an appointed time and place. 2, For holding extraordinary general meetings, on the requisitions of nine or more shareholders who have at least 21 shares. 3, For the qualification and election of directors, and for general management. 4, For the retirement of at least one-fourth of the directors annually, and for preventing their re-election for at least 12 calendar months. 5, For preventing the company from purchasing any shares or making advances of money or securities for money to any person on a security of a share or shares in the bank. 6, For the publication of the assets and liabilities of the bank once at least in every month. 7, For the yearly audit of the accounts of the bank by auditors chosen at a general meeting of the shareholders and not being directors at the time. 8, For the yearly communication of the auditors' report, and of a balance sheet, and profit and loss account to every shareholder. This deed must be executed by the holders of at least one-half the shares on which not less than 10*l.* on each share or 100*l.* has been paid up; but the banking business cannot be commenced until the deed has been executed by all the shareholders, nor until one-half at least of each

share has been paid up, no portion of which can be repaid without the sanction of the Board of Trade. Under letters-patent for a term of years not exceeding twenty the shareholders of a joint-stock bank may become one body politic and corporate with perpetual succession, a common seal, and power to purchase and hold lands, of such annual value as shall be expressed in each letters-patent.

This act contains some other provisions which are deserving of notice as improvements. Every year, between the 28th of February and 25th of March, a memorial is required to be transmitted to the Commissioners of Stamps, setting forth, amongst other particulars, the name, style, and firm of the banking company, the names and places of abode of the several members thereof, and of the directors, managers, and other officers; and this document may be inspected at the Stamp-office on payment of a fee of one shilling. A list of the registered names and places of abode of all the members of the company for the time being must also be printed and conspicuously placed for the use of the public in the bank. The manager or one of the directors is required to transmit from time to time to the Commissioners of Stamps an account of changes which have taken place in the list of directors, managers, officers, and shareholders. The Commissioners of Stamps are to give a certified copy of these memorials on payment of a fee of 10s. Persons whose names are in the memorial last delivered, are themselves or their representatives liable to legal proceedings, as existing shareholders.

When joint-stock banks were first established, each shareholder was answerable to the extent of his own property. By 1 Vict. c. 73, they were rendered liable only to the extent of their shares, but the liability did not extend to the shareholders as a body. By 7 & 8 Vict. c. 113, the liability of any shareholder extends equally to the whole body of shareholders as a company; but if execution of any judgment against the company shall be ineffectual to obtain satisfaction, then any shareholder may be proceeded against. The acts of an individual partner were formerly binding on all the other shareholders, but it is only the acts of an individual director or other officer properly appointed which are now binding on the co-partnership. [PARTNERSHIP.]

At one time a great part of the foreign commerce of England was engrossed by chartered companies. An account of two of these companies has been already given. [HUDSON'S BAY COMPANY; EAST INDIA COMPANY.] There were several others, which have ceased to exist, whose operations constitute an important feature in our commercial history. The Russia Company, which was chartered in 1555, succeeded in establishing a trade with the Czar of Muscovy, and a year or two afterwards Jenkinson, a very active servant of the company, struck out a new line of commercial intercourse through Russia into Persia. One of the main objects of the association was the discovery of new trades. Before the close of the sixteenth century the company embarked in the whale fishery at Spitzbergen, in which, as well as in their operations elsewhere, private traders, termed "interlopers," were not allowed to engage. In 1669, when the Czar had greatly reduced the privileges of the company or placed the Dutch on the same commercial footing, the association ceased to be a joint-stock concern, but became what was called a regulated company, in which each person traded with his own capital, subject to the general regulations of the association. The Russia Company was at the cost of maintaining embassies. The Russia Company still exists, that is, officers are elected, and a dinner is annually given, which is generally attended by the Russian ambassador. The expenses of the company are paid out of trifling dues levied on imports from Russia.

In 1581 Queen Elizabeth granted to a company the exclusive right of trading to Turkey. This was the origin of the Turkey or Levant Company. Its exclusive privileges of trade extended to the dominions of the Grand Seignor, whether in Europe, Asia, or Africa. Factories were established, and the company was at the cost of supporting an English ambassador at Constantinople, and consuls at Aleppo,

Smyrna, and other places. Adam Smith speaks of the Turkey Company in his time, seventy or eighty years ago, as "a strict and oppressive monopoly." The Turkey Company surrendered its charter in 1825.

Several companies for trading to Africa were successively established in the seventeenth century, but from various causes they all failed. The company established in 1662 was bound by its charter to supply the West India plantations with three thousand negroes annually. This was the third African company established during the century; but it was broken up, as its predecessors had been, and a fourth company was established, at the head of which were King Charles II. and the Duke of York. After the Revolution companies for exclusive trading were declared illegal unless they obtained the sanction of an act of parliament, and the African trade was thrown open. The different African Companies had, however, been at considerable cost in erecting forts and factories, and maintaining officers; and to indemnify the existing association, an act was passed in 1698 for levying a duty upon private traders to Africa, who were no longer to be deemed interlopers. In 1730 parliament granted 10,000*l.* for the purpose of keeping up establishments in Africa. The trade was now entirely thrown open, and the powers of the African Company confined to the government of forts and factories. In 1821 the charter of the African Company was surrendered and the company ceased to exist.

The South Sea Company, so famous for its association with a gigantic commercial bubble, was vested with the exclusive privilege of trading to the Pacific Ocean and along the east coast of South America from the Orinoco to Cape Horn. The company engaged to supply negroes to the Spanish dominions in South America under the Assiento treaty. [ASSIENTO TREATY.] The privilege of exclusive trade to the south-east and elsewhere was taken away by 47 Geo. III. c. 23, and by a subsequent act duties called South Sea Duties were imposed on goods imported from the limits (with some exceptions) to which the privilege had been confined. These duties were to form a guarantee fund, and were to cease when the fund had reached a certain amount.

Besides these companies there were the Eastland, the Hamburg, and the Greenland companies, with some others, but none of them were of so much importance as those we have just noticed.

JOURNALS OF THE LORDS AND COMMONS. [PARLIAMENT.]

JUDEX, JUDICIUM. It is of some importance to form a correct notion of the terms *judex* and *judicium* in the Roman writers. The *judicia privata* were those in which one party claimed something of or against another party, and must be distinguished from the *judicia publica*. The former had relation to *actiones*, and may be generally described as Civil actions; the latter were of the nature of Criminal prosecutions.

In the Judicia Privata the party complainant (actor) came before the prætor or other magistrate who had jurisdiction (jurisdictio), and made his claim or complaint, to which the defendant (reus) might put in a plea (exceptio). The prætor then made an order by which he referred the matter to Judices, or Recuperatores, or Arbitri, whose chief office was to ascertain the facts in dispute. The formula, or order of the prætor, was of the nature of a provisional decree: it stated the matter at issue between the parties and the judgment that was to follow upon the determination of the facts. The plaintiff had to prove his case, or the defendant to prove his plea, before the judices. Sometimes there was only one judex. The speech of Cicero 'Pro Publio Quintio' was made before a single judex, aided by assessors (consilium).

The patroni or orators appeared before the judices to support the cause of their clients. The judices were sworn to act impartially. Witnesses were produced on each side and examined orally; and it is clear from the remarks of Cicero (*Pro Cæcina*, c. 10), where he is commenting on the evidence in the case of Cæcina, that he had cross-examined and put to confusion an impudent witness on the other side (see also the Oration *Pro Flacco*, c. 10). It is clear also from the oration 'Pro Cæcina,' that the inquiry

before the judices was public. Written documents, such as letters and books of accounts, were produced before the judices by way of evidence. (Cicero, *Pro Q. Roscio.*) When the orators had finished their speeches, the judices decided by a majority. The sentence was, if necessary, perhaps in some cases carried into effect by the lictors of the magistrate who appointed the judices. The form in which the judices pronounced their decision was that of a judgment or decree.

The difference between the judicium and arbitrium was this: in the judicium the claim, demand, or damages was a sum fixed; in the arbitrium it was a sum uncertain; and this difference was attended with certain variations in the procedure. This is very clearly expressed by Cicero (*Pro Q. Roscio*, c. 4).

The judices must to some extent have settled questions of law, inasmuch as the determination of the facts sometimes involved the interpretation of the law. They were accordingly allowed to have assessors (consilium) learned in the law (jurisconsulti), but the jurisconsulti merely advised the judices, who alone delivered the decision. In case of doubt as to the law, the judices might consult the magistrate under whom they were acting; but as to the matters of fact, the judices were the sole judges, and could take no advice from the magistrate (*Dig.*, v. 1. 79). Gellius (xiv. 2) gives an amusing account of the difficulty which he felt on being appointed a judex, and how he got rid of the business by declaring on oath, as the judex always might do, that he could not come to any decision. The difficulty which he experienced was exactly one of those which a person not practically acquainted with legal proceedings would experience.

We may presume that the judices were generally persons qualified by a sufficient education, though they were not necessarily lawyers; but it does not appear that they were named out of any determinate class, and there is good reason for thinking that both parties generally agreed upon the judices, or at least had the power of rejecting them. It would seem as if every Roman citizen was considered competent to discharge the functions of a judex in civil actions, at least under the emperors: but this part of the subject is not free from difficulty.

Appeals from the decisions of the judices were not uncommon. (Ulpian, *Dig.*, xlix. 1. 1; Scaevola, *Dig.*, xlix. 1. 28.)

So far seems pretty well ascertained. Such being the qualifications of the judices, and the magistrates who had "jurisdictio" being only annual functionaries, it appears that there was no class of men among the Romans, like our judges, who were the living interpreters of law for a series of years in succession. The jurisconsulti seem to have kept the Roman law together as a coherent body, and it is from their writings alone that the Digest is compiled. [JUSTINIAN'S LEGISLATION.]

The Judicia Publica were in the nature of criminal prosecutions, in which any person, not disqualified, might be the prosecutor, and in which the verdict was followed by a legal punishment. Judices were employed here also, and were a kind of assessors to the magistrate who presided. The judices were the judges of the facts laid to the charge of the accused. Both the accuser and the accused might challenge a certain number of the judices. Witnesses were examined before them; slaves by torture, freemen orally. The judices, at least in the more important matters, voted by ballot: each judex put into the urn the tablet of Acquittal, of Condemnation, or the tablet N. L. (non liquet, "it is not clear"), according to his pleasure. The magistrate pronounced the verdict according to the tablets which made a majority. A lively picture of the intrigues and bribery which were not unusual on such trials is given by Cicero in speaking of the affair of Clodius and the Bona Dea (*Ad Attic.*, i. 13, 16). The various changes made at Rome as to the body from which the judices were chosen refer only to the judicia publica.

This subject is not free from difficulty. What is above stated must be taken only as correct in the main features. Further inquiry is still wanted on several matters connected with the functions of the judices. Enough has been said to enable the reader to compare the Roman Judices

with the English jury, and to show the difference of the institutions.

(Gaius, lib. iv.; Heineccius, *Syntagma*, &c., by Haubold; Unterholzner, *Ueber die Rede Cicero für den Schauspieler Roscius, Zeitschrift*, &c., i. 248; and his remarks on the difference between the *condictio* and the *actio in personam*, with reference to the *judices*; 'De Judiciis,' *Dig.*, v. 1; 'De Judiciis Publicis,' *Dig.*, xlviii.; *Instit.*, iv. tit. 18.)

Dr. Pettingall's 'Enquiry into the Use and Practice of Juries among the Greeks and Romans,' London, 1769, may be consulted as to the functions of the Roman judices in the Judicia Publica. The author's conclusions seem in the main to be correct, though his essay is an ill-arranged and unmethodical production. The 'Attische Process,' by Meier and Schömann, and the essay of Pettingall, may be consulted with reference to the functions of the Attic Dicastæ.

JUDGE (from the French *juge*, which is from the Latin *judex*). [JUDEX.] A judge in England and Wales is a man who presides in a court duly constituted, declares the law in all matters that are tried before him, and pronounces sentence or judgment according to law. There are judges of the three Superior Courts of Law at Westminster, judges in the Courts of Equity, a judge in the Court of Bankruptcy, judges of the Insolvent Court, judges in the Ecclesiastical and Admiralty Courts, and some others. Some judges are called Recorders, and there are other names, but the name does not alter the nature of the office. When the judges simply are spoken of, the judges of the superior courts of common law are meant. There are fifteen judges of these courts: five in the Court of Queen's Bench, five in the Court of Common Pleas, and five in the Court of Exchequer. There are at present five judges in Equity. [COURTS; EQUITY.]

The judges of the superior courts of law are appointed by the crown. They hold their office during good behaviour, but they can be removed by the crown on the address of both houses of parliament (13 Wm. III. c. 2). Formerly their commissions ceased upon the demise of the crown, but by the 1 Geo. III. c. 23, they continue to hold their office during good behaviour notwithstanding any demise of the crown, and their salaries are secured to them so long as they hold their office. The judges of the courts of Equity are also appointed by the crown. [CHANCELLOR; CHANCERY.]

By various acts of parliament retiring pensions of a determinate amount may be granted to the fifteen judges of the three superior courts of law, and to the judges in Equity. The lowest retiring pension is 3500*l.*, and this amount may be given to all puisne judges of the three courts. The highest retiring pension is 5000*l.*, which may be granted by the crown to the lord chancellor upon his resignation. But to be entitled to these pensions all the judges of the superior courts of law, and the judges in Equity, except the lord chancellor, must have held the office for fifteen years, unless bad health has prevented them from holding office so long.

Judges of Courts of Record [COURTS] are not liable to prosecution for anything done by them as judges, but they may be prosecuted in parliament. Nor are they liable to an action for any error in judgment, or for wrongful imprisonment, at least when they are acting within their jurisdiction. Judges are punishable for bribery by loss of office, fine, and imprisonment.

The powers and duties of judges would form the subject of an elaborate treatise. It may be sufficient to observe that in England the judges of the superior courts are so well protected in the discharge of their duty and so sure in their office, as to make them entirely independent of all political and private influence, and they are paid well enough to secure them against all temptation of lucre. Accordingly an instance of misconduct in any judge of the superior courts of law, or any judge who holds a high office, is now seldom or never heard of. The only question that can be raised is, whether the most competent persons are always appointed, and whether persons are not sometimes appointed who, though not absolutely incompetent, are much less competent than others, and sometimes hardly competent. This danger is somewhat limited by public opinion, and particu-

larly by the opinion of the members of the bar, so that the risk of a totally incompetent person being appointed is not great. But as the appointment of the judges in the superior courts of law, and the judges in Equity, is really made by those who for the time act as the ministers of the crown, the appointments of judges are, like other appointments made by the ministers, nearly always conferred on those who belong to the political party which for the time is in power. This evil, so far as it is an evil, is inseparable from the practical working of the constitution, and is probably a much less evil than any other mode of appointment that could be suggested.

JUDICIARY. [COURTS.]

JURISCONSULTI. [JUDEX; JURISPRUDENCE.]

JURISDICTION. This term is the Latin word Jurisdictio, which simply signifies the "declaration of jus or law." He who had jurisdictio was said "jus dicere," to "declare the law." The whole office (officium) of him who declared the law was according expressed by the word Jurisdictio. (*Dig.*, 2, tit. *De Jurisdictione.*) Jurisdictio was either voluntary (voluntaria) or litigant (contentiosa). The jurisdictio voluntaria related to certain acts, such for instance as those forms of manumission and adoption, which must be done before a magistratus in order to be valid. The jurisdictio contentiosa related to litigation, and such legal proceedings were said to be "in jure," before the magistratus, as opposed to the proceedings before a judex, which were said to be "in judicio." The magistratus was said "jus dicere" or "reddere," when he exercised his functions; and "magistratus" and "qui Romae jus dicit" are accordingly convertible terms. Jurisdiction in England means an authority which a court of law or equity has to decide matters that are litigated before it or questions that are tried before it. The courts at Westminster have jurisdiction all over England and Wales; but the jurisdiction of other courts is limited by being confined to certain limits of space and to certain kinds of causes or matters in dispute. When the jurisdiction of a court extends all over England, it may still be limited as to the kind of causes which it tries. Thus the superior courts of law and the courts of equity have their several jurisdictions as to matters which they hear and determine. [EQUITY.] The ecclesiastical courts also have their separate jurisdiction; and other courts, such as the Court of Insolvency, Borough Courts, and others, have their several jurisdictions. It follows, that if proceedings are commenced against a man before a court which has no jurisdiction in the matter brought before it, the defendant may answer by alleging that the court has no jurisdiction; which is called pleading to the jurisdiction. When a party is convicted by a court that has no jurisdiction in the matter, the proceedings may be moved into the Court of King's Bench by the writ of Certiorari and quashed. [CERTIORARI.] Those who have limited jurisdiction are liable, it is said, to an action, if they assume a jurisdiction which they have not.

JURISPRUDENCE. The Latin word *prudentia* (contracted from *providentia*) came, by a natural transition, to mean *knowledge* or *understanding.* "Habebat (says Nepos, *Life of Cimon*, c. 2) magnam prudentiam tum juris civilis tum rei militaris:" hence persons skilled in the Roman law were called *juris prudentes*, or simply *prudentes;* in the same manner that they were called *consulti*, as well as *juris consulti.* (Haubold's *Lineamenta Instit. Juris Romani*, lib. iv. cap. 5; Hugo, *Geschichte des Römischen Rechts*, p. 458, ed. xi.) A large part of the Roman law was gradually adopted by the legislature and the judices from the writings of the jurists: the emperors moreover sometimes appointed persons whose opinions (or *responsa*) the judex was bound to follow. (*Dig.*, lib. i. tit. 2, No. 2, § 5-7, 35-47; *Inst.*, lib. i. tit. 2, § 8.) According to the acceptation of the term *prudens* or *juris prudens* in the Roman law, *juris prudentia* is sometimes limited to the dexterity of a practical lawyer in applying rules of law to individual cases; whence the technical use of the term *jurisprudence* in the French legal language for law founded on judicial decisions or on the writings of jurists.

By *general jurisprudence* is properly

meant the science or philosophy of positive law, as distinguished from *particular jurisprudence*, or the knowledge of the law of a determinate nation. "General jurisprudence, or the philosophy of positive law, is not concerned directly with the science of legislation: it is concerned directly with principles and distinctions which are common to various systems of particular and positive law, and which each of those various systems inevitably involves, let it be worthy of praise or blame, or let it accord or not with an assumed measure or test. General jurisprudence is concerned with law as it necessarily is, rather than with law as it ought to be; with law as it must be, be it good or bad, rather than with law as it must be, if it be good." (Austin, *Outline of a Course of Lectures on General Jurisprudence*, p. 3.) For example, every system of positive law must involve such notions as sovereignty, legal right, legal duty, legal sanction, civil or criminal injury, the grounds of imputation or legal guilt, and of non-imputation or legal innocence, property, possession, &c., which therefore belong to the province of general jurisprudence. [LAW; LEGISLATION.]

A detailed, precise, and lucid description of the province of general jurisprudence will be found in Mr. Austin's work on the subject (8vo. London, 1832), and the annexed outline of a course of lectures. (*Journal of Education*, No. 8, p. 285.) A list of works on general jurisprudence may be seen in Krug's 'Philosophisches Lexicon,' in the article *Rechtslehre*.

The jurists of the seventeenth and eighteenth centuries treated the subject of general jurisprudence under the name of the *law of nature*, and often combined it in the same treatise with *International Law*, or the *Law of Nations*, in the modern acceptation of that term. The work of Grotius, 'De Jure Belli et Pacis,' though professedly limited to International Law, is in part composed upon this principle; but that of Puffendorf, 'De Jure Naturæ et Gentium,' affords the best example of this mode of treatment. These works ought to be read with the excellent and instructive commentary of Barbeyrac. [INTERNATIONAL LAW.]

JURY. A jury is an assembly of men authorised to inquire into or to determine facts, and bound by an oath to the faithful discharge of their duty. The word is from the Latin *juro*, to swear, whence we find this institution called in law Latin *jurata*, and the persons composing it *jurati*; in French *les jurés*, and in English *the jury*. In the English law, when the object is inquiry only, the jury is sometimes called an inquest or inquisition, as in the instance of a grand jury or coroner's inquest; but when facts are to be determined by it for judicial purposes, it is styled a jury. When the trial by jury is now spoken of, it signifies the determination of facts in the administration of civil or criminal justice by twelve men sworn to decide facts truly according to the evidence produced before them.

Inquiry into facts on behalf of the crown by means of juries was frequent in England long before the trial by jury was commonly used in courts of justice. Thus we find, immediately after the Conquest, inquisitions *ad quod damnum* (which anciently took place in all grants by the crown, though now of more limited use); inquisitions *post mortem*, which were instituted on the death of the king's tenants, to ascertain of what lands they died seised; inquisitions of lunacy (*de lunatico inquirendo*); and several other inquests, which were called inquests of office, and took place where the crown was concerned in interest: all these inquiries were made by means of juries of the neighbourhood, who were presumed to be conversant with the facts. In England also in the reign of John, when the lands of the Normans were seised into the hands of the king, inquisitions by jury were executed in each county to ascertain their value and incidents. (See the forms of these inquests in Hardy's *Rotuli Normanniæ*, vol. i. p. 122.)

Besides these juries of inquiry (*inquisitoria jurata*), there were accusatory juries (*jurata delatoria*), who presented offences committed within their district or hundred to the king or his commissioned justices. These inquests were immediately connected with the administration of justice, their duty being to charge offenders, who, upon such accusa-

tion, were put upon their trial before judges, and were afterwards condemned or "delivered" by them according to the result of the trial. These accusatory juries were probably the origin of our present grand juries. Juries of inquiry and accusatory juries might consist of more or occasionally of fewer than twelve men.

The third species of jury is that jury which we mean when we speak of *trial by jury*. Dr. Pettingall, in a tract published in 1769, expresses a confident opinion that juries of this description are the same as the Dicastæ (δικασταί) of the Athenians and the Judices of the Romans, and he maintains that our trial by jury was derived immediately from Rome, and ultimately from Greece. But it is more probable that they are rather to be ascribed to the accidental resemblance of popular institutions for the administration of justice in different countries than to identity of origin. The precise time at which this species of trial originated in England has been the subject of much discussion; and in particular whether it was known to the Anglo-Saxons, or was introduced by the Conqueror. Coke and Spelman, among earlier legal antiquaries, and, in later times, Nicholson (*Preface* to Wilkins's *Anglo-Saxon Laws*, p. 9), Blackstone (*Commentaries*, book iii. c. 22), and Turner (*History of Anglo-Saxons*, vol. iv. book xi. cap. 9), maintain the existence of this institution before the Conquest. On the other hand, Hickes (*Dissert. Epist.*, p. 34), Reeves (*History of the English Law*, vol. i. p. 24), and several other learned writers, contend that it was introduced by the Conqueror, or at least that it was derived from the Normans, and was not of Anglo-Saxon origin. The latter opinion is adopted by Sir Francis Palgrave, in his *History of the English Commonwealth*, vol. i. p. 243.

Traces of the trial by jury, in the form in which it existed for several centuries after the Conquest, are more distinctly discernible in the ancient customs of Normandy than in the few and scanty fragments of Anglo-Saxon laws. The trial by twelve compurgators, which was of canonical origin, and was known to the Anglo-Saxons and also to many foreign nations, resembled the trial by jury only in the number of persons sworn; and no conclusion can be drawn from this circumstance, as twelve was not only the common number throughout Europe for canonical and other purgations, but was the favourite number in every branch of the polity and jurisprudence of the Gothic nations. (Spelman's *Gloss.*, tit. *Jurata*; also *Edinburgh Review*, vol. xxxi. p. 115.) For this reason Mr. Hallam justly observes (*Middle Ages*, vol. ii. p. 401) that in searching for the origin of trial by jury, "we cannot rely for a moment upon any analogy which the mere number affords." Besides this, the trial by compurgators under the name of Wager of Law continued to be the law of England until it was abolished, in 1833, by 3 & 4 Wm. IV. c. 42, § 13, and is treated by all writers and noticed in judicial records ever since the Conquest as a totally different institution from the trial by jury. The trial *per sectatores* or *per pares* in the county court, which has sometimes been confounded with the trial by jury, was a different tribunal. The sectatores or pares were, together with the sheriff or other president, judges of the court,—as are the suitors (sectatores) in the county courts at present; and it appears to have been the common course with the Gothic nations that twelve assessors should be present with the king or judge to decide judicial controversies. (Du Cange, *Gloss.*, ad vocem *Pares*.) The *pares curiæ* resembled permanent assessors of the court, like the *scabini* mentioned in the early laws of France and Italy, much more nearly than sworn jurors indiscriminately selected, and performing a subordinate part to the judge. On the other hand, the incidents of the mode of trial prevalent in Normandy before the Conquest correspond in a striking manner with those of our trial by jury as it existed for centuries afterwards. In Normandy offenders were convicted or absolved by an inquest of good and lawful men summoned from the neighbourhood where the offence was supposed to have been committed. The law required that those were to be selected to serve on such inquest who were best informed of

the truth of the matter; and friends, enemies, and near relatives of the accused were to be excluded. Also in the Norman Writ of Right, those were to be sworn as recognitors who were born and had even dwelt in the neighbourhood where the land in question lay, in order that it might be believed that they knew of the truth of the matter and would speak the truth respecting it. (*Grand Coustumier*, cap. 68, 69, 103.) These incidents, though unlike our present mode of trial (which has entirely altered its character within the last four centuries), are nearly identical with the trial by jury as it is described first by Glanville and afterwards by Bracton, and correspond almost verbally with the form of the jury process, which has continued the same from very early times to the present day; by which the sheriff is commanded to return "good and lawful men of the neighbourhood, by whom the truth of the matter may be better known, and who are not akin to either party, to recognize upon their oaths," &c. On the other hand (as Madox remarks, in his *History of the Exchequer*, p. 122), "if we compare the laws of the Anglo-Saxon kings with the forms of law process collected by Glanville, they are as different from one another as the laws of two several nations."

Though there are some traces of the trial by jury in the four reigns which immediately succeeded the Norman Conquest, it was not till a century afterwards, in the reign of Henry II., that this institution became fully established and was reduced to a regular system. Its introduction into frequent use at this period was probably owing to the law or ordinance for the trial by assize in pleas of land or real actions, made by Henry II. This law has not come down to our times, but it is fully described by Glanville (lib. ii. cap. 7), and the greater part of the treatise of that writer is occupied by an account of the trial by twelve men which he warmly eulogises and represents as having been introduced in opposition to the unsatisfactory mode of trial by battle or duel. In the reign of Henry II. it appears also that a jury was sometimes used in matters of a criminal nature—the proceeding in such cases being noticed as an inquiry *per juratum patriæ vel vicineti*, or *per juramentum legalium hominum*. Thus in the 'Constitutions of Clarendon,' enacted in 1164, it is directed that "if no person appeared to accuse an offender before the archdeacon, the sheriff should, if requested to do so by the bishop, cause twelve lawful men of the neighbourhood or of the township to be sworn, who might declare the truth according to their conscience." These however were probably accusatory juries, similar to our grand inquests, and not juries employed for the actual trial or "deliverance" of criminals, which do not seem to have been commonly used until a later period.

The law of Henry II. introduced the trial by assize or jury in real actions as a mode of deciding facts which the subject might claim as a matter of right. Glanville calls it "a certain royal benefit conferred upon the people by the clemency of the sovereign with the advice of the nobility." Accordingly we find in the *Rotuli Curiæ Regis* in the time of Richard I. and John, many instances of trials by jury being claimed by parties, though it appears from these curious records that at this time the trial by battle was still in frequent use. In the reign of John we first begin to trace the use of juries for the trial of criminal accusations. At first it seems to have been procured by the accused as a special favour from the crown, a fine, or some gift, or consideration being paid in order to purchase the privilege of a trial by jury. Several instances of this kind are collected in the Notes and Illustrations to Palgrave's *Commonwealth of England*, vol. ii. p. 186. The payment of a fine took place also not unfrequently in civil cases where any variation from the regular course was required. (*Rotuli Curiæ Regis*, vol. i. pp. 354, 375; vol. ii. pp. 72, 92, 97, 101, 114.) It is clear, however, from Bracton and Fleta, that at the end of the thirteenth century the trial by jury in criminal cases had become usual, the form of the proceedings being given by them in detail. (Bracton, p. 143.) Introduced originally as a matter of favour and indulgence, it gradually superseded the barbarous customs of battle, ordeal, and wager of law, until at length it became,

both in civil and criminal cases, the ordinary mode of determining facts for judicial purposes.

It is a common error that the stipulation for the *judicium parium* in Magna Charta referred to the trial by jury. Sir Edward Coke, in his commentary upon Magna Charta, expressly distinguishes between the trial by peers and the trial by jury (2nd Inst. 48-9); but Blackstone says, "The trial by jury is that trial by the peers of every Englishman, which, as the grand bulwark of his liberties, is secured to him by the Great Charter." (*Com.*, vol. iv. p. 349.) This is confounding two distinct modes of trial. The *judicium parium* was the feudal mode of trial, where the *pares* or *convassalli ejusdem domini* sat as judges or assessors with the lord of the fee to decide controversies arising between individual *pares* or peers. It was a phrase perfectly understood at the period of Magna Charta, and the mode of trial had been in use long before in France and all parts of Europe where feuds prevailed. (Du Cange, *Gloss.*, v. *Pares.*) It was essentially different from the trial by jury, which could never be accurately called *judicium parium.* We read frequently in the records of those times (and even in Magna Charta itself) of *juratores*, of *veredictum* or *juramentum legalium hominum*, and *jurata vicineti* or *patriæ*, all of which expressions refer to a jury; but not a single instance can be found in any charter, or in any ancient treatise or judicial record, in which the jury are called *pares*, or their verdict *judicium.* (Reeves's *History of the Law*, vol. i. p. 249.) In the records of the 'Curia Regis' in the first year of John's reign, among numerous entries of *Ponit se super juratum vicineti* or *patriæ*, are also entries of *Ponit se super pares suos de eodem feodo*, which plainly indicates a distinction between the two modes of trial. (*Rotuli Curiæ Regis*, vol. ii. p. 90.)

Until about the reign of Henry VI. the trial by jury was a trial by witnesses. The present form of the jurors' oath is that they shall "give a true verdict, *according to the evidence.*" At what time this form was introduced is uncertain; but for several centuries after the Conquest the jurors both in civil and criminal cases were sworn merely *to speak the truth.* (Glanville, lib. ii. cap. 17; Bracton, lib. iii. cap. 22; lib. iv. p. 287, 291; Britton, p. 135.) Hence their decision was accurately termed *veredictum*, or verdict, that is a "thing truly said;" whereas the phrase "true verdict" in the modern oath is not an accurate expression. Many other incidents of the trial by jury, as recorded in ancient treatises, conclusively show that the jury were merely witnesses. They were brought from the neighbourhood where the disputed fact was suggested to have occurred, because, as the form of the jury process says, they were the persons "by whom the truth of the matter might be better known." Again, if the jurors returned by the sheriff in the first instance declared in open court that they knew nothing of the matter in question, others were summoned who were better acquainted with it. (Glanville, lib. ii. cap. 17.) They might be excepted against by the parties upon the same grounds as witnesses in the Court Christian. They were punished for perjury if they gave a wilfully false verdict; and for *crassa ignorantia* if they declared a falsehood or hesitated about their verdict upon a matter of notoriety, which all of the country (*de patriâ*) might and ought to have known. (Bracton, p. 290.) And ancient authors strongly admonish judges to "take good heed in inquisitions touching life and limb, that they diligently examine the jurors from what source they obtain their knowledge, lest peradventure by their negligence in this respect Barrabas should be released and Jesus be crucified." (Bracton, lib. iii. cap. 21; Fleta, lib. i. cap. 34.) It is one of the numerous circumstances which show the character of the jury in the earlier periods of the history of the institution, that though all other kinds of murder might be tried by a jury, murder by poison was excepted, "because," say the ancient writers, "the crime is so secret, that it cannot be the subject of knowledge by the country." (Bracton, lib. iii. cap. 18; Fleta, lib. i. cap. 31.)

The original principle and character of the trial by jury in criminal cases in Scotland appear to have been the same as

the truth of the matter; and friends, enemies, and near relatives of the accused were to be excluded. Also in the Norman Writ of Right, those were to be sworn as recognitors who were born and had even dwelt in the neighbourhood where the land in question lay, in order that it might be believed that they knew of the truth of the matter and would speak the truth respecting it. (*Grand Coustumier*, cap. 68, 69, 103.) These incidents, though unlike our present mode of trial (which has entirely altered its character within the last four centuries), are nearly identical with the trial by jury as it is described first by Glanville and afterwards by Bracton, and correspond almost verbally with the form of the jury process, which has continued the same from very early times to the present day; by which the sheriff is commanded to return "good and lawful men of the neighbourhood, by whom the truth of the matter may be better known, and who are not akin to either party, to recognize upon their oaths," &c. On the other hand (as Madox remarks, in his *History of the Exchequer*, p. 122), "if we compare the laws of the Anglo-Saxon kings with the forms of law process collected by Glanville, they are as different from one another as the laws of two several nations."

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jurors both in civil and criminal causes were sworn merely to speak the truth. (Glanville, lib. ii. cap. 17; Bracton, lib. iii. cap. 28; lib. iv. p. 287, 291; Britton, p. 188.) Hence their decisions were accurately termed *veredictum*, or *verdictum*, that is a "thing truly said;" whereas the phrase "true verdict" in the modern sense is not an accurate expression. Many other incidents of the trial by jury, as exercised in ancient times, conclusively show that the jury were merely witnesses. They were brought from the neighbourhood where the disputed fact was supposed to have happened, because, as the form of the jury process says, they were the persons "by whom the truth of the matter might be better known." Again, if the jurors summoned by the sheriff in the first instance declared on oath in court that they knew nothing of the matter in question, others were summoned who were better acquainted with it. (Glanville, lib. ii. cap. 17.) They might be excepted against by the parties upon the same grounds as witnesses in the Court Christian. They were punished for perjury if they gave a wilfully false verdict; and the sworn jurymen if they declared a falsehood or hesitated about their verdict upon a matter of notoriety, which all the country (*de patria*) might and ought to have known. (Bracton, p. 290.) Such ancient authors strongly admonish judges to "take good heed to [illegible] touching life and limb, that they [illegible] the jurors from [illegible] they could have knowledge, [illegible] by their oath present as [illegible] should be [illegible] a verdict." (Bracton, lib. iii. [illegible]) In a [illegible]

in England. The following extract is taken from a curious paper delivered to the Speaker of the House of Commons, and recorded on the Journals at the date 4th June, 1607. (*Comm. Journ.*, vol. i. p. 378.) "In Scotland, criminal causes are not governed by the civil law; but *ordanes** and juries pass upon life and death, very near according to the law here (in England). Which jury being chosen out of the Four Halfs about (as the Scottish law terms it), which is to say, out of all places round about that are nearest to that part where the fact was committed, the law doth presume that the jury may the better discern the truth of the fact by their own knowledge; and therefore they are not bound to examine any witnesses, except out of their own disposition they shall please to examine them in favour of the party persuer; which is likewise very seldom or almost never used. It is of truth that the judge may either privately beforehand examine such witnesses as either the party persuer will offer unto him, or such others as in his own judgment he thinks may best inform him of the truth; and then when the jury is publicly called and admitted, he will cause these depositions to be produced and read; and likewise if the party persuer desire any witness there present to be examined, he will publicly do it in presence of the jury and both parties." The mode of commencing the introduction of evidence to juries, as described in this document, bears a strong resemblance to the growth of the proceeding in England.

The earliest traces of the examination of witnesses or of evidence being laid before juries in England, which formed the commencement of a total change in their character, occur in the reign of Henry VI. The change was not effected suddenly, or by any particular act of parliament, but was introduced by slow degrees; and though distinctly discernible in the reign of Henry VI., was not completely effected before the times of Edward VI. and Mary. Fortescue, in the 26th chapter of his work 'De Laudibus Legum Angliæ,' written at the end of the reign of Henry VI., and about the year 1470, expressly mentions that witnesses were examined and sworn before the jury; but he calls the jury indiscriminately *testes* and *juratores*, and makes frequent allusions to their character as witnesses. Shortly after Fortescue's time, namely, in the year 1498, there is a reported case between the Bishop of Norwich and the Earl of Kent (*Year-Book*, 14 Henry VII.), in which a jury had been separated by a tempest "while the parties were showing their evidence;" and one question raised for the opinion of the court was, whether, when the jury came together again, they were competent to proceed with the case and to give a verdict. The objection pressed was that the jury had separated before the evidence was given; to which it was answered that "the giving the evidence was wholly immaterial, and made the matter neither better nor worse; that evidence was only given in order to inform the consciences of the jury respecting the rights of the parties; but that if neither party chose to give evidence, still the jury would be bound to deliver a verdict."

In the reign of Henry VII., it appears from records printed in Rastell's Entries that demurrers to evidence were an acknowledged form of proceeding, which shows that at that time evidence of some kind was given, and consequently that the character of the jury had been in some degree changed from that of *witnesses* to that of *judges* of facts upon testimony. The proofs mentioned in these records are called *evidentia;* and it is most probable that at first the only evidence given consisted of deeds, writings, and of depositions of absent witnesses taken before the justices of the peace or other magistrates, and that oral testimony was not common until a later period. The entire absence of all mention of evidence or witnesses, as contradistinguished from jurors, in treatises, reports, records, or statutes, previously to the sixteenth century, strongly corroborates the fact of the early character of the trial by jury. There is no trace of any rules of evidence, nor of any positive law compelling the attendance of witnesses, or punishing them for false tes-

* This word is so printed in the Journals, but it is probably a mistake for some other word.

timony or non-attendance, nor of the existence of any process against them before the statute 5 Eliz. c. 9 (1562). In the case of Summers *v.* Mosely, reported in 2 Crompton and Meeson, p. 485, Mr. Baron Bayley says that he had been unable to find any precedents of the common *Subpœna ad testificandum* of an earlier date than the reign of Elizabeth, and expresses a conjecture that this process may have originated with the above-mentioned statute. The *Subpœna ad testificandum* does not appear in the registers of Writs and Process until the reign of James I. (West's *Symboleography*.) Witnesses were examined orally upon the trial of Sir Thomas More, in the reign of Henry VIII.; but the reported state trials in the reigns of Edward VI. and Mary show that the practice in that respect was then by no means settled. In the reign of Elizabeth, however, there is abundant proof, from Sir Thomas Smith's 'Commonwealth of England,' and other authorities, that oral testimony was used without reserve (except in state prosecutions) both in civil and criminal trials; and consequently it cannot be doubted that about the middle of the sixteenth century the trial by jury had fully assumed the character in which we are now familiar with it, namely, an institution deciding facts for judicial purposes by means of testimony or evidence produced before the jury.

This view of the original character and office of the jury seems to account for the practice of fining or otherwise punishing juries by the court when they gave an unsatisfactory verdict, a practice which was partially continued, though not without remonstrance by legal authorities, after the nature of the institution had been changed. If juries, who were merely witnesses sent for to inform the court of facts which they were presumed to know, returned a wilfully false verdict, they were guilty of a contempt of justice, and might properly be punished; but when their character was changed, and their verdict depended not on their own knowledge of the facts, but upon the impressions produced on their minds by the evidence, such a punishment became injustice; and though occasionally practised in the sixteenth century, was declared to be illegal soon after the Restoration by the judgment in Bushell's case, reported in Vaughan's Reports, p. 135.

The juries now in use in England in the ordinary courts of justice are grand juries, petty or common juries, and special juries. There is also the coroner's jury. [CORONER.] Grand juries are exclusively incident to courts of criminal jurisdiction; their office is to examine into charges of crimes brought to them at assizes or sessions, and if satisfied that they are true, or at least that they deserve more particular examination, to return a bill of indictment against the accused, upon which he is afterwards tried by the petty jury. [INDICTMENT; LAW, CRIMINAL.] A grand jury must consist of twelve at the least, but in practice a greater number usually serve, and twelve must always concur in finding every indictment. No further qualification is required for grand jurors (except in the case of grand jurors at the sessions of the peace, 6 Geo. IV. c. 51, § 1) than that they should be freeholders, though to what amount is uncertain; or freemen, lawful liege subjects, and not aliens or outlaws. (Hawkins, *Pleas of the Crown*, chap. 25, sect. 16.)

Until the end of the thirteenth century the only qualification required for petty or common juries, for the trial of issues in criminal or civil courts, was that they should be "free and lawful men;" *freemen*, as holding by free services or free burgesses in towns; and *lawful* men, that is, persons not outlawed, aliens, or minors, but entitled to the full privileges of the law of England. By the statute of Westminster 2, passed in the thirteenth year of Edward I. (1296), it was enacted that no man should be put on juries who had not some freehold of the value of 20*s.* a year within the county, or 40*s.* without it; and this qualification was raised to 40*s.* in counties by the stat. 21 Edward I. The object of these statutes was to protect poor persons from being oppressed and injured by being summoned on juries, and also to obviate the evil of the non-attendance of jurors, which frequently occurred from their inability to leave their agricultural or handicraft occupations. The stat. 2 Henry V. however

was intended to secure the intelligence and responsibility of jurors by requiring a property qualification; and it enacted that no person should be a juror in capital trials, nor in any real actions or personal actions where the debt or damages declared for amounted to 40 marks, unless he had lands of the yearly value of 40*s.*; and if he had not this qualification he might be challenged by either party. This continued to be the qualification of common jurors until the passing of the statute 6 George IV. c. 50, which repealed all former statutes upon this subject, and entirely remodelled the law respecting juries. By this statute "every man (with certain specified exceptions) between the ages of twenty-one years and sixty years who has within the county in which he resides 10*l.* a year in freehold lands or rents, or 20*l.* a year in leaseholds for unexpired terms of at least twenty-one years, or who, being a householder, is rated to the poor-rate in Middlesex on a value of not less than of 30*l.*, and in any other county of not less than 20*l.*, or who occupies a house containing not less than fifteen windows, is qualified and liable to serve on juries in the superior courts at Westminster and the courts of the counties palatine for the trial of issues to be tried in the county where he resides, and also to serve on grand juries at the sessions of the peace, and on petty juries, for the trial of issues triable at such sessions in the county in which he resides." The exceptions are:—peers, judges of the superior courts, clergymen, Roman Catholic priests, dissenting ministers following no secular employment but that of a schoolmaster, serjeants and barristers at law, and doctors and advocates of the civil law actually practising; attorneys, solicitors, and proctors actually practising; officers of courts actually exercising the duties of their respective offices; coroners, gaolers, and keepers of houses of correction; members and licentiates of the College of Physicians actually practising; surgeons, being members of one of the royal colleges of surgeons in London, Edinburgh, or Dublin, and actually practising; apothecaries certificated by the Apothecaries' Company, and actually practising; officers in her Majesty's navy or army on full pay; pilots licensed by the Trinity House; masters of vessels in the buoy and light service; pilots licensed by the lord-warden of the cinque-ports, or under any act of parliament or charter; household servants of the sovereign; officers of customs and excise; sheriffs' officers, high constables, and parish clerks.

Lists of all persons qualified to be jurors are made out by the churchwardens and overseers of each parish, and fixed on the church door for the first three Sundays in September in each year; these are afterwards allowed at a petty sessions and then delivered to the high constable, who returns them to the next quarter-sessions for the county. The clerk of the peace then arranges the lists in a book, which is called the 'Jurors' Book' for the ensuing year, and afterwards delivers it to the sheriff. From this book the names of the jurors are returned in panels to the different courts.

Special juries are composed of such persons as are described in the 'Juror's Book' as esquires, and persons of higher degree, or as bankers or merchants; and it is the duty of the sheriff to make a distinct list of such persons, which is called the 'Special Jurors' List.' When a special jury is ordered by any of the courts, which must always be the result of a special application of one of the parties, 48 names are taken by ballot from this list in the manner particularly described in the statute, which are afterwards reduced to 24 by means of each party striking out 12; and the first 12 of these 24 who answer to their names in court are the special jury for the trial of the cause.

The mode of objecting to a jury by the parties is by challenge, though in modern practice this course is seldom resorted to, having yielded to the more convenient usage of privately suggesting the objection to the officer who calls the jury in court; upon which the name objected to is passed over as a matter of course without discussion. This practice, though a less troublesome and obnoxious mode of effecting the object of obtaining a jury indifferent between the parties than a formal challenge, is strictly speaking irregular,

and being considered to take place by consent, and as a matter of favour, cannot be insisted upon as a right. Challenges are of two kinds: challenges to the *array*, and challenges to the *polls*. The challenge to the array is an objection to the whole panel or list of jurors returned for some partiality or default in the sheriff or the under-sheriff by whom it has been *arrayed*. Challenges to the polls are objections to particular jurors, either on the ground of incompetency (as if they be aliens, or of insufficient qualification within the provisions of the Jury Act, 6 Geo. IV. cap. 50), or of bias or partiality, or of infamy. Upon these challenges the cause of objection must in each case be shown to the court; but in trials for capital offences the accused is entitled to challenge *peremptorily* (that is, without giving any reason) thirty-five jurors. The king, however, as nominal prosecutor, has no right of peremptory challenge, though he is not compelled to show his cause of challenge until the panel is gone through, and unless a full jury cannot be formed without the person objected to.

The trial by jury, originally introduced into the law of France in criminal cases by the National Assembly, was retained in the French code. An account of the proceeding and of the qualifications and formation of the jury will be found in the *Code d'Instruction Criminelle*, livre ii., tit. 2, chap. iv. and v. [CODES, LES CINQ.] Of late years the advantage of the trial by jury has been frequently the subject of debate among German and French jurists, and in particular the propriety of its introduction has been discussed in the various commissions issued with a view to reforming the laws of several of the German States. The French code is the law of the Rhenish Province of Prussia, and the trial by jury in criminal cases exists there.

In Scotland all crimes are tried by jury, with the exception of certain breaches of police regulations and petty depredations, which are summarily adjudicated on. The number on a criminal jury or "assize" is fifteen, and the verdict is that of the majority. It may be "guilty," "not guilty," or "not proven"—the last as well as the second being an acquittal. In the course of the improvements of the court of session, projected and partly executed in the years 1808 and 1809, an attempt was made to introduce the trial by jury into civil proceedings in Scotland; but great opposition was made to it in that country, and the proposition was not at that time carried into effect. But in the year 1815 a statute (55 Geo. III. c. 42) was passed, though then still much opposed in Scotland, which established a jury court not as a separate and independent tribunal, but as subsidiary to the court of session, for the trial of particular questions of fact to be remitted for trial by the judges of the court of session at their discretion. In order to meet a conscientious difficulty much insisted upon in petitions from Scotland against this measure, namely, that it would be often impossible for a jury to give a unanimous verdict unless some of the members violated their oaths, it was provided by the act that if the jury are not unanimous in twelve hours, they shall be discharged, and a new trial granted. The judges of this court, called the 'Lords Commissioners of the Jury Court in Civil Cases,' were appointed by commission, and consist of a chief judge and two other judges. The stat. 59 Geo. III. c. 35, which recites that the introduction of the trial by jury in civil cases by the former act had been found beneficial, made a variety of improvements in the machinery of the jury court. By the stat. 11 Geo. IV. & 1 Wm. IV. c. 69, the jury court as a separate tribunal was abolished, and the trial by jury was united with the ordinary administration of justice in the court of session.

JUSTICE CLERK OF SCOTLAND. This name properly designated the clerk of court, of the chief justice or lord justiciar, of Scotland; and originally there were as many justice clerks as there were justiciars, that is to say, one for Galloway, one for Lothian, or the territory of the Scots king south of the Forth, and one for Scotland then strictly so called, or the territory north of the Forth.

The same circumstances also which reduced the number of justiciars to one justice-general for the whole realm, reduced likewise the number of justice

and being considered to take place by consent, and as a matter of favour, cannot be insisted upon as a right. Challenges are of two kinds: challenges to the array, and challenges to the polls. The challenge to the array is an objection to the whole panel or list of jurors returned for some partiality or default in the sheriff or the under-sheriff by whom it has been arrayed. Challenges to the polls are objections to particular jurors, either on the ground of incompetency (as if they be ... or of insufficient qualification ... the provisions of the Jury Act, 6 ...

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clerks. The calamitous affair of Flodden however, to which we especially refer, had a further effect on the latter: for by the fall of Lawson and Henryson on that fatal field, the offices of both king's advocate and justice clerk became vacant at one time, and this at a period when perhaps few remained capable of either. Wishart of Pittarrow was appointed to both places, and in his time a deputy was first constituted, to act as clerk to the justice court. This was the first step in the singular rise of the justice clerk from the table to the bench of the Court of Justiciary.

At the Institution of the court of Session in 1532, the justice clerk was made one of the judges. This will not surprise us when we consider the constitution of that court. It was in fact an ecclesiastical tribunal, and, agreeably to the practice of such, deliberated in secret with shut doors. It was necessary therefore for the security of the crown that some of the crown officers should be continually present. The justice clerk was one of these: he was public prosecutor on behalf of the crown. The king's treasurer was another; and accordingly both of them were lords of session. For the same reason the king's advocate was made a lord of session: and when from there being no vacancy, or otherwise, such appointment did not or could not take place, these officers had special writs from the crown authorising them to remain in court during its deliberations.

A further rise of official dignity took place: for it having become usual to appoint certain lords of session as assessors or assistant judges to the lord justice-general, the justice clerk began in the early part of the seventeenth century to be appointed to that duty; and about the middle of the same century he had acquired the style of "lord justice clerk." In ten years afterwards the privy council met and passed an act, declaring the justice clerk a constituent part of the justice court; and in the act of parliament 1672, c. 16, he was made the president of the Court of Justiciary, to preside in absence of the justice-general. His rise in the Court of Session followed; for in 1766, when Miller, afterwards Sir Thomas Miller of Glenlee, took his seat on the bench, it was, by desire of the court, on the right of the lord president; to which latter office he himself afterwards rose, being the first justice clerk so promoted. And in 1808, when the Court of Session was, by 48 Geo. III. c. 151, divided into two chambers, the lord justice clerk was made *ex officio* president of the second division. His salary is 2000*l.*, besides an equal sum as a lord of session.

With respect to the *justice clerk depute*, that officer was long so termed; but at length, when the justice clerk acquired the style of lord, and was declared a constituent part of the Court of Justiciary, his *depute* came to be termed "the principal clerk of justiciary," and this becoming a sinecure, he got himself a "depute" about the middle of last century, and the second depute about thirty years ago an "assistant;" all of whom continue to this day, and are in the gift of the lord justice clerk. It is not a little remarkable, that on both occasions when these changes took place, there took place also not a diminution, as we might expect, but a duplication of the salary; that of the first depute being raised in 1764 from 100*l.* to 200*l.*, and that of the second depute, in 1795, from 80*l.* to 150*l.*

Besides these there are three other justice clerk deputes, and his appointees. They are commonly called the "circuit clerks," being his deputies to the three circuits of the Court of Justiciary. They had their origin in the act 1587, c. 82, which directed such circuits to be made, in place of the former practice of the justiciar passing through the realm from shire to shire successively.

JUSTICES, LORDS. [LORDS JUSTICES.]

JUSTICES OF THE PEACE are persons appointed to keep the peace within certain limits, with authority to act judicially in criminal causes, and in some of a civil nature arising within those limits, and also to do certain other things ministerially, that is, as servants of the crown performing official acts in respect of which they are intrusted with no judicial discretion. The authority of justices of the peace is derived from the king's prerogative of making courts for

the administration of the law, or created by different statutes; their duties are expressed in the royal commission which appoints them to the office or are prescribed by those statutes.

Before the reign of Edward III. there were in every county conservators of the peace, whose duty it was to afford protection against illegal force and violence. These conservators were chosen by the freeholders assembled in the county court under the king's writ. [CONSERVATORS OF THE PEACE.]

The following account is generally given of the origin of the present justices of the peace. Upon the compulsory resignation of Edward II., Edward III., or rather his mother Isabella, in his name, sent writs to the different sheriffs, stating that his accession had taken place with his father's assent, and commanding that the peace should be kept on pain of disinheritance and loss of life and limb. Within a few weeks from this time it was ordained, by 1 Edward III. c. 16, that for the better keeping and maintaining of the peace in every county good and lawful men who were not maintainers of barretry (malveiz barrets) should be assigned to keep the peace. The mode in which these new keepers of the peace were to be assigned was construed to be by the king's commission; and this ordinance had the double effect of transferring the appointment from the people to the crown, and of laying the foundation for the gradual accession of those powers which are now exercised by justices of the peace.

By 12 Richard II. c. 10, the wages of justices of the peace are fixed at four shillings per day of sessions, and two shillings for their clerks, payable out of the fines and amerciaments at such sessions; but these wages, like those of members of parliament, have long ceased to be received, and justices of the peace act without any pay or emolument.

Justices of the peace are appointed either by act of parliament, by royal charter (in the case of justices in boroughs not within the Municipal Corporations Act the charter usually appointing certain municipal officers to be justices, and prescribing the manner in which vacancies in the offices are to be filled up), or by a commission from the crown under the statute of 1 Edward III. The form of the commission of the peace has from time to time been altered, and the authority of the justices enlarged. As now framed, it consists of two distinct parts, and contains two separate grants of authority. Of these the former gives to any one or more justices not only all the power relating to the maintenance of the peace which was possessed by the conservators at common law, but also all the additional authority mentioned in the statutes. The latter defines the power of justices when the whole body, or such of them as choose to attend, act together in general sessions. [SESSIONS.]

The former part of the commission is as follows:—"Victoria, &c., to AB, CD, EF, &c., greeting: Know ye that We have assigned you jointly and severally, and every one of you, Our justices to keep Our peace in Our county of Z, and to keep and cause to be kept all ordinances and statutes for the good of the peace and for the preservation of the same, and for the quiet rule and government of Our people made, in all and singular their articles in Our said county, as well within liberties as without, according to the force, form, and effect of the same, and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; and to cause to come before you or any of you all those who to any one or more of Our people, concerning their bodies or firing their houses, have used threats, to find sufficient security for the peace or their good behaviour towards Us and Our people; and if they shall refuse to find such security, then them in Our prisons, until they shall find such security, to cause to be safely kept."

By 5 Geo. II., c. 18, no attorney, solicitor, or proctor shall be a justice of the peace for any county whilst he continues in practice. By 18 Geo. II. c. 20, no person shall be capable of acting as a justice of the peace for any county, riding, or division within England or Wales, who shall not have, in law or equity, to and for his own use and benefit, in pos-

session a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years determinable upon life or lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, or hereditaments in England or Wales, of the clear yearly value of 100*l.* over and above all incumbrances affecting, and all rents and charges payable out of or in respect of the same, or who shall not be seised of or entitled to, in law or equity, to and for his own use and benefit, the immediate reversion or remainder of and in lands, tenements, and hereditaments, leased for one, two, or three lives, or for any term of years determinable on lives upon reserved rents, and which are of the yearly value of 300*l.*, and who shall not have taken and subscribed an oath stating the nature of the qualifying estate. The third section of this statute imposes a penalty of 100*l.* upon those who act without having taken and subscribed the oath, and for acting without being qualified. The statute, however, excepts from these provisions certain official persons. A justice of the peace cannot legally act after he has ceased to be qualified; but it is not necessary that he should continue to retain the same qualification, nor will the absence of a qualification render his acts absolutely void.

Justices appointed by act of parliament or by the king's charter are not removeable except for misconduct, but the authority of a justice appointed by the king's commission may be determined at the pleasure of the crown, either directly by writ under the great seal, or impliedly, by making out a new commission, from which his name is omitted. But until notice of the revocation of the authority, or publication of a new commission, the acts of the ex-justice are valid in law, and the warrant of a justice remains in force until it be executed, although he die before its execution. The commission is also determined by the death of the king by whom it was issued; but now by 6 Anne, c. 7, § 8, all offices, civil and military, are to continue for six months after the demise of the crown, unless sooner determined.

The 9 Geo. IV. c. 17, repeals the statutes which imposed the taking the sacrament of the Lord's Supper as a qualification for office, and requires the following declaration:—"I, AB, do solemnly and sincerely, in the presence of God, profess, testify, and declare on the true faith of a Christian, that I will never exercise any power, authority, or influence which I may possess by virtue of the office of justice of the peace, to injure or weaken the Protestant church as it is by law established in England, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to which such church or the said bishops or clergy are or may be entitled." The omission to subscribe this declaration does not subject a person acting as a justice of the peace to any penalty; the statute (§ 5) merely renders the appointment void; and whilst the justice continues in the exercise of his office his acts are not either void or voidable so as to affect the rights of those who are not privy to such omission. Persons of the Jewish religion have therefore in a few instances acted as county magistrates. The act passed in 1845 for the relief of persons of the Jewish religion applies only to offices in municipal boroughs. [JEWS.]

Justices of the peace, when they are out of the county, &c. for which they are appointed, have no coercive power; but examinations, recognizances, and informations voluntarily taken before them in any place are good. But by 28 Geo. III. c. 49, justices who act for two or more adjoining counties may act in one of those counties for another of them; and those who act for a county at large may act for such county within any city, town, &c. being a county of itself, and situated within, surrounded by, or adjoining to any such county at large; and by 1 & 2 Geo. IV. c. 63, a similar power is given to county justices to act within any city, town, &c. having exclusive jurisdiction, though not a county of itself. In towns which have a separate quarter sessionss under the Municipal Corporations Act, the county justices have no authority.

Justices of the peace have in general no authority over matters arising out of the district for which they are appointed, but they may secure the persons of those

who are charged before them with felony or breach of the peace; and by the Municipal Corporations Act, § 111, in every borough to which the king does not grant a separate court of quarter-sessions the justices of the county within which such borough is situated are to exercise in it the same jurisdiction as in any other part of the county.

By 24 Geo. III. c. 55, if any person against whom a warrant is issued escape, go into, reside, or be in any other county, &c. out of the jurisdiction of the justice granting the warrant, any justice of the county, &c. where such person escapes, &c., upon proof on oath of the handwriting of the justice granting the warrant, is to indorse his name thereon, which will be a sufficient authority to execute the warrant in such other jurisdiction, and carry the offender before the justice who indorsed the warrant, or some other justice of the county, &c. where it was indorsed. Summonses and warrants issued by borough justices, appointed under the provisions of the Municipal Corporations Act, in a matter within their jurisdiction, may be executed at any place within the county in which the borough is situated, or at any place within seven miles of such borough, without being backed. [CONSTABLE, p. 614.]

The judicial authority of a justice out of sessions is both civil and criminal—civil, where he is authorized by statute to adjudicate between master and servant, or to enforce the payment of rates, &c., or the observance of the regulations of friendly societies, &c.; criminal, where he requires surety of the peace or a recognizance for the peace or for good behaviour, or where he acts in the suppression of riots, or where he acts with summary power to decide upon the guilt or innocence of the party accused, according to the view which he may take of the evidence, and to punish the offender. (See LAW, CRIMINAL, for a notice of offences punishable on summary conviction, and for some remarks on the subject of summary punishment.) But all proceedings before justices, whether civil or criminal, if removed into the Queen's Bench, are there treated as belonging to the crown side of the court.

Where a statute empowers justices to hear and determine an offence in a summary way, it is implied that the party be first cited to appear, so that he may have an opportunity of being heard, and of answering for himself; and to proceed against an offender without causing him to be summoned is a misdemeanor. A statute authorizing justices to require any person to take the oath of allegiance, or to do some other specific act, impliedly gives them power to issue their precept requiring the attendance of the party.

Upon the hearing of informations and in other preliminary proceedings before justices out of sessions, neither the prisoner on the one hand, nor the prosecutor on the other, can claim as of right, and against the will of the justices, to have a legal adviser present, except, it would seem, in cases in which the deposition may by some statutory provisions be made evidence against the accused upon his trial for the offence in the event of the death of the witness. In practice, however, both counsel and attorneys are generally admitted as a matter of courtesy to advise and protect the interest of prisoners. Every person has a right to be present before a justice, acting in his judicial capacity. But although in such a case counsel or attorneys, or any third persons, are at liberty to attend, they could not formerly claim to be heard on behalf of their clients; the justices might refuse to hear them, or to allow them to interfere with the proceedings. But now, by 6 & 7 Wm. IV. c. 114, in all cases of summary conviction, persons accused are to be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney. In all cases where justices are directed to take examinations or evidence, it will be implied that the examination or evidence is to be taken under the sanction of an oath or solemn affirmation.

Statutes frequently empower justices to award damages to an injured party, as in cases of assault, or malicious injuries to property.

Where a complaint is made before a justice, and a summons or warrant issues,

the justice upon hearing and determining the matter may award costs to either party, and enforce the payment of such costs.

Justices ought not to exercise their functions in cases in which they are themselves the persons injured. They should cause the offenders to be taken before other justices, or, if present, should desire their aid. In all cases which a justice may hear and determine out of sessions upon his own view, or upon the confession of the party, or upon oath of witnesses, he ought to make a record on parchment under his hand of all the proceeding and proofs, which record should in the case of summary convictions be returned to the next sessions and there filed.

By 27 Geo. II. c. 20, in all cases where a justice is required to issue a warrant for the levying of any penalty inflicted, or any sum of money directed to be paid, by any statute, the justice granting the warrant is empowered therein to order and direct the goods distrained to be sold within a certain time, to be limited in such case (so as such time be not less than four days, or more than eight days), unless such penalty, or sum of money, with reasonable charges of taking, keeping, and selling the distress, be sooner paid.

When justices refuse to hear a complaint over which they have jurisdiction, or to perform any other duty which the law imposes on them, the party aggrieved by such refusal may apply to the Court of King's Bench for a writ of mandamus, a process by which the king requires the party to whom it is addressed to do the thing required or to show cause why it is not done. If no sufficient excuse be returned, a peremptory mandamus issues, by which the party is commanded absolutely to do the thing required. But as justices have no indemnity in respect of their acts because done in obedience to a mandamus, this process is not granted where there is anything like a reasonable doubt of the justice's authority to do the required act.

Justices of the peace are strongly protected by the law in the execution of their office. Opprobrious words which would not subject the speaker to any proceeding, civil or criminal, if uttered under other circumstances, yet if spoken of a justice whilst actually engaged in his official duties, may be made the subject of an action or of an indictment; or if spoken in the presence of the justice, may be punished by commitment to prison, as for a contempt of court; this commitment however must be by a written warrant.

Where a justice of the peace acting in or out of sessions acts judicially in a matter over which he has jurisdiction, and does not exceed his jurisdiction, he is not liable to an action, however erroneous his decision may be; nor will even express malice or corruption entitle a party aggrieved by such decision to any remedy by action: the delinquent magistrate is answerable only to the crown as for an offence committed against the public. Where the justice has no jurisdiction, or exceeds his jurisdiction, or having jurisdiction deviates from the prescribed legal form to an extent which renders the proceedings void, or where a conviction under which the justice has granted a warrant is set aside by a superior court, an action will lie against the justice to recover damages in respect of any distress, imprisonment, or other injury which may have resulted from his acts, though done without malice or other improper motive. But even in these cases, if the justice has acted *bonâ fide* in his magisterial capacity, if he has intended to act within his jurisdiction, though by mistake he may have exceeded it, and not acted within the strict line of his duty, and also in cases where a justice has acted or intended to act in the execution of his ministerial duties, he is entitled to the protection of several important statutory regulations.

No action can be brought against a justice of the peace for anything done by him in the execution of his office without one calendar month's previous notice in writing, specifying the cause of the intended action, within which period of one month the justice may tender amends to the party complaining, which will be a bar to the action, if refused and found to be sufficient by the jury. Nor can any such action be maintained unless it be

commenced within six calendar months after the committing of the act complained of, nor unless it be brought or laid in the county in which the act was committed. The defendant in such action may, under the general issue, *i. e.* a plea simply denying the alleged trespass, &c., give in evidence any matter of justification or excuse without being bound, as other defendants are, to select one particular line of defence, and set that defence with precision upon the record in the shape of a special plea. When the plaintiff in such action obtains a verdict. and the judge certifies that the injury for which the action is brought was wilful and malicious, the plaintiff will be entitled to double costs of suit.

Where the action is brought on account of any conviction which may have been quashed, and cannot therefore be produced as a justification of the consequent distress or imprisonment, the plaintiff is disabled, by 43 Geo. III. c. 141, from recovering more than 2*d.* damages, or any costs of suit, unless it be expressly alleged in the declaration that the acts complained of were done maliciously and without any reasonable or probable cause.

When a justice acts with partial, corrupt, or malicious motives, he is guilty of a misdemeanor, for which he may be indicted, and in a clear case of misconduct the Court of Queen's Bench, which exercises a general superintendence over the conduct of those to whom the administration of the criminal law of the country is intrusted, will, if the application be made without delay, give leave to file a criminal information. But the court will consider, not whether the act complained of be strictly right or not, but whether it proceeded from unjust, oppressive, or corrupt motives, among which motives fear and favour are both included. If the affidavits filed in support of the application disclose nothing which may not be attributable to mere error or mistake, the court will not even call upon the justice to show cause why a criminal information should not be filed. The court will not entertain a motion for a criminal information against a justice of the peace, unless notice of the intended application have been given in sufficient time to enable him, if he thinks proper, to meet the charge in the first instance by opposing the granting of the rule to show cause.

The proceedings after an information has been filed, or an indictment found against justices of the peace for criminal misconduct, are the same as in other cases of misdemeanor. If the defendant suffer judgment by default, or is found guilty by the verdict of a jury, the punishment is by fine or imprisonment, or both; after which an application may be made to the lord chancellor to exclude him from the commission; and when affidavits are filed in the Queen's Bench impeaching the conduct of justices of the peace, such affidavits are frequently directed by the court to be laid before the chancellor, to enable him to judge whether such persons ought to remain in the commission.

The institution of justices of the peace has been adopted in most of the British colonies, and has with some modifications been retained in the United States of America. A great deal of the vitality of the English social system is owing to the number of persons in nearly every rank of life who are called into activity and employed in the functions of provincial or local administration, instead of the various duties which they discharge being performed by paid officers appointed by the central government, as in most European countries. [DEPARTMENT.] There are no doubt some disadvantages in the English system, but on the whole they are more than counterbalanced by the peculiar benefits which are inherent in it. We have already stipendiary magistrates who have received a legal education, and a still more numerous body of unpaid justices of the peace many of whom have not had this advantage, but the unpaid and unprofessional justices of the peace, generally speaking, decide upon most of the matters which come before them quite as satisfactorily as the stipendiary professional magistrates, and considering that the unpaid justices are by far the most numerous class, complaints of their administration are far less frequent than might be expected.

A parliamentary paper was issued in

1831 which showed the number of justices of the peace for counties who had qualified in England and Wales. The total number was 4842, namely, 4330 in England and 512 in Wales. The number of clergymen who had qualified as justices was 1090 in England and 143 in Wales. In Derbyshire and Sussex there was not one clerical magistrate. [CLERGY, p. 520.]

JUSTICIAR OF SCOTLAND. The earliest individual in this high office which extant records name seems to be Geoffrey de Maleville of Maleville, *temp.* K. Malc. IV.

The term "Scotland" was then less extensive in its application than at present: it designated, properly speaking, not the whole territory of the realm, but that part only which lay north of the Forth, or *Scots sea*, as it was called; and accordingly, contemporary with Maleville there was another justiciar, David Olifard, justiciar of Lothian, that is to say, the territory south of the Forth, excepting the district of Galloway, which had long its own peculiar laws and customs. About the middle of the thirteenth century, however, Galloway too had its justiciar, so at this time there were *three* justiciars in the realm of Scotland—a justiciar of Galloway, a justiciar of Lothian, and a justiciar of Scotland strictly so called. They were all probably of coordinate authority: each, next to the king, supreme in his district; but the district of the last was the most extensive, and contained the metropolis of the kingdom. The justiciars of Scotland were accordingly the most conspicuous men of the time:—the Comyns, earls of Buchan; the Mac Duffs, earls of Fife; Melville; and Sir Alan Durward. This last had an eye to the crown itself; for having married the illegitimate daughter of King Alexander II., he gained over the chancellor to move in council her legitimation, and that, on failure of issue of the king's body, she and her heirs might inherit her father's throne. But the king conceived so great a displeasure at this, that he immediately turned the chancellor out of office, and soon afterwards the justiciar also. The proud Durward removed to England, joined King Henry III. in France, and served in his army, till in a few years he was, by the influence of the English king, restored to his office of justiciar, whence he was displaced only by the more powerful Comyn. The incident in Durward's life to which we have just alluded was not singular: the justiciar was *caput legis et militiæ*, at the head both of the law and also of the military force of the kingdom, and repeated instances occur in early times of their military prowess as well as judicial firmness.

The death of King Alexander III. left the crown open to a competition which allowed Edward I. of England to invade the kingdom. In 1292 the English Court of King's Bench sat for some time in Roxburgh; and in 1296 Sir William Ormesby, a justice of the Common Pleas and justice in eyre in England, was constituted, by Edward, lord justiciar of Scotland. This appointment was of short duration; but in 1305 Edward, having again put down the Scots, distributed the kingdom into four districts, and constituted for each district two justices (an Englishman and a Scotchman), in the nature of the English justices of assize—with a view to put the whole island under one and the same judicial system. Edward's early death however rendered the scheme abortive; and Galloway had soon its own laws, and Lothian and Scotland their justiciars as before, with this difference, that the metropolis of the kingdom was now shifting southwards to Edinburgh, and the term Scotland, in its strict acceptation, had given place to the appellation "north of the Forth." Sir Hugh de Eglinton, justiciar of Lothian in the middle of the fourteenth century, and distinguished for his poetical genius, was now therefore "Hugh of the Awl Ryal," or of the royal palace; and towards the end of the next century Andrew lord Gray was advanced from the situation of justiciar north of Forth to that of justiciar south of Forth. He continued in this place with approbation for eleven years, and died but a few months before the calamitous affair of Flodden.

On this event, which happened in the beginning of the sixteenth century, the office of lord justiciar, or, as he was now

styled, justice-general (in contradistinction to the special justiciars, now frequently appointed as well for particular trials as for particular places and districts), came into the noble family of Argyle, where it was hereditary for a century, and comprehended at once the entire kingdom. The High Court of Justiciary then also began to be settled at Edinburgh, and the regular series of its records, or books of adjournal, to commence. It was at this time also that the Court of Session was erected by ecclesiastical influence. Various attempts had been made by the clergy in former reigns to establish such a court. In 1425 the first "Court of the Session" was instituted under the influence of Wardlaw, bishop of St. Andrew's and founder of the university there; but immediately on his death, which happened soon after, it drooped and expired. In 1468 Bishop Shoreswood, the king's secretary, tried to revive it; and about thirty years after, Elphinstone, bishop of Aberdeen, did so likewise. In 1494 however the latter founded, or rather re-founded, the university of Aberdeen, and had interest enough to get an act passed in parliament to enforce in all the courts of the kingdom the study and practice of the Roman laws; and in 1503 the "Court of Daily Council" was established. This court had a more extensive jurisdiction than the former: it was universal, being instituted to decide all manner of summonses in civil matters, complaints, and causes, daily as they happened to occur; and it was calculated to be permanent. But the present was not an opportunity to be lost; and accordingly, in the minority of King James V. and while the nation was weakened and distracted by the loss at Flodden, the Court of Session was established under the lord chancellor, and with a majority of ecclesiastics both on its bench and at its bar. The consequence was, that from that day forward the Court of Justiciary declined; its civil jurisdiction ceased, being engrossed by the Court of Session; and the latter became in its place the supreme court of the kingdom. The Reformation effected a change in the composition of the Court of Session, but not much in its position or powers; and in 1672 an act was passed in parliament constituting a certain number of the judges, or lords of session, judges of justiciary under the justice-general and justice clerk, who was now made vice-president of the Court of Justiciary.

Nothing else of consequence touching the constitution of the court occurred till lately, when, by 1 Wm. IV. c. 69, sec. 18, the office of lord justice-general, which had become in a manner a perfect sinecure, was appointed to devolve on and remain with the office of lord president of the Court of Session, who should perform the duties thereof as presiding judge in the Court of Justiciary; the effect of which enactment is to place the lord justice-general again at the head of the administration of the law; and thus, by a singular revolution, restore him, after the elapse of 300 years, to his former situation of lord chief-justice of Scotland. On the death, in 1836, of the late Duke of Montrose, who was lord justice-general, the office devolved on Mr. Hope, who was then lord president of the Court of Session.

JUSTICIARY, CHIEF, an office of high importance in the early history of the English judicial system. It originated in a separation of the functions of the Grand Seneschal, an officer who ranked the first in dignity in the state after the king, and who had civil and military jurisdiction. The corresponding modern title for the Grand Seneschal is Lord High Steward. [STEWARD, LORD HIGH.] The office of Grand Seneschal was made hereditary shortly after the Norman conquest, and it became expedient to assign to others the active duties. The judicial functions of the Grand Seneschal were transferred to an officer who was styled the High or Chief Justiciary. He presided in the king's court and in the exchequer, and his authority extended over all other courts. He was ex-officio regent of the kingdom in the king's absence. Writs ran in his name and were tested by him. The last who held the office and bore the title of Capitalis Justitiarius Angliæ was Philip Basset, temp. Henry III. In the 52nd Henry III. Robert de Bruis was the first who was appointed Capitalis Justitiarius ad placita coram

Rege tenenda, *i. e.* chief-justice of the King's Bench. (For an elaborate notice of the office of Chief Justiciary see *Pictorial Hist. of England*, i. 567.)

JUSTIFIABLE HOMICIDE. [MURDER.]

JUSTINIAN'S LEGISLATION. Justinian, soon after ascending the throne, instructed (Feb. A.D. 528) a commission consisting of Joannes and nine other persons, among whom were Tribonian or Tribunian, and Theophilus, to make a general compilation of the best and most useful laws, or "constitutions," which had been promulgated by the emperors his predecessors, beginning from Hadrian's Perpetual Edict down to his own time. [CONSTITUTIONS, ROMAN; EQUITY, i. pp. 844-5.] Partial compilations had been made in the time of Constantine by private individuals, Gregorianus and Hermogenianus, of which only fragments remain, and a more complete compilation was made under Theodosius II. [THEODOSIAN CODE.] All these were now merged in the new code of Justinian. A remarkable difference of style and manner is observable between the older constitutions issued before Constantine and those promulgated afterwards. The former, being issued at Rome and framed upon the decisions, or "responsa," of learned jurists, are clear, sententious, and elegant: the latter, which were promulgated chiefly at Constantinople in the decay of the Roman language, are verbose and rhetorical. Joannes and his nine associates completed their task in fourteen months, and the new code, having received the imperial sanction, was published in April, A.D. 529. A few years after, Justinian, by the advice of Tribonian, ordered a revision of his code to be made by Tribonian and four others. These commissioners suppressed several laws, as either useless or inconsistent with present usage, and added many constitutions which the emperor had been promulgating in the mean time, as well as fifty decisions on intricate points of law. The code thus revised was published in December of the year 534, under the title of 'Codex Justinianeus Repetitæ Prælectionis,' and thenceforth had the force of law.

The Code is divided into twelve books, every book is subdivided into titles, and each title into heads which are numbered 1, 2, 3, and so on. Book i. treats of the Catholic faith, defines its creed agreeably to the first four general councils, and forbids public disputations on dogmas; it then treats of the rights, privileges, and discipline of bishops and other ecclesiastical persons; next of heretics, Samaritans, Jews, apostates, &c., against whom it contains several penal enactments; after which the book proceeds to speak of the laws, and their different kinds, and lastly of the magistrates. Book ii. treats of the forms to be observed in commencing a suit; then of restitution, compromises, sureties, and lastly, of the oath of calumny.* Book iii. treats of judicia and judices, and judicial proceedings generally; of holidays, of the various jurisdictions, of inofficious (inofficiosa) testaments and donations, of inheritances, of the Lex Aquilia, of mixed actions, of actions for crimes committed by slaves, of gaming, of burying-places and funeral expenses. Book iv. begins with the explanation of personal actions which are founded on loan and other causes; of obligationes and actions, with their effect in relation to heirs and other persons bound by them; of testimony and written evidence; of things borrowed for use; of contract by pledge, and the personal action thereon; of compensation, interest, deposit, mandate, partnership, buying and selling, permutation, hiring, and emphyteutic contracts. Book v. treats of betrothment, gifts in contemplation of marriage, of marriages, women's portions (dos), and the action that lies for the recovery of the dos, of gifts between husband and wife, of estates given in dos, of alimony, of concubines, natural children, and the process of legitimation. It next treats of guardianship (tutela), of the administration by tutors, and of the alienation of minors' estates. Book vi. treats of slaves, and freedmen, and the rights of their patrons; then it explains at large the Prætorian possession called "Bonorum pos-

* Many of the terms here used are terms of Roman law, and as such do not admit of translation by equivalent English terms.

sessio:" after which it expounds the whole matter of testaments, as institutions and substitutions of heirs, preteritions and disinheritings, disclaiming of inheritance, the opening of wills, of codicils, legacies, and fiduciary bequests, and lastly of succession to the property of intestates. Book vii. treats of manumissions; afterwards of matters relating to prescription, of judgments (sententiæ) and appeals, of the cession of estate or goods, of the seizure of goods, of the privileges of the exchequer (fiscus), and the revocation of alienations made to defraud creditors. Book viii. begins with interdicts: it then treats of pledges and pawns, of stipulations, novations, delegations. &c. It treats next of the paternal power, of the emancipation of children, and their ingratitude; it then explains what is meant by custom (consuetudo); it next speaks of gifts (donationes mortis causâ, &c.) and their various kinds; and lastly, of taking away the penalties of celibacy. Book ix. treats of crimes, criminal judgments and punishments. Book x. treats of the rights and prerogative of the fiscus, of vacant goods, of treasure found (treasure trove), de Annonis et tributis; of the decuriones and their office; of domicile, of public offices and exemption from them, and of the various kinds of public offices and functions appertaining to them. Book xi. treats of the rights common to the city of Rome and municipal towns, corporate bodies and communities, and a great variety of other matter. Book xii. continues the same subject, explaining the right of cities as to having offices civil and military, and also as to having functionaries for the execution of judgments and the orders of magistrates. This enumeration gives a general, though very imperfect view of the contents of the Justinian Code.

The learned Gothofredus, in his Prolegomena to his edition of the Theodosian code, observes that Tribonian and his associates have been guilty of several faults in the compilation of the Code; that the order observed in the succession of the titles is confused, that some of the laws have been mutilated and have been rendered obscure, that sometimes a law has been divided into two, and at other times two have been reduced to one; that laws have been attributed to emperors who were not the authors of them, or had given contrary decisions; all which would be still more injurious to the study of the Roman law, if we had not the Theodosian code, which is of great use towards rightly understanding many parts of the code of Justinian.

In the year following the publication of the first edition of his Code, Justinian undertook a much greater and more important work; to extract the chief rules of law contained in the writings of the Roman Jurisconsulti. In the course of centuries, under the republic and the empire, many thousand volumes had been filled with the learned lucubrations of the jurisconsults, which, as Gibbon observes, 'no fortune could purchase, and no capacity could digest.' The jurisconsults since the time of Augustus had been divided into opposite schools, and thus conflicting opinions were often produced, which only served to puzzle those who had to decide what was law. To put order into this chaos, was the object of Justinian. In December, 530, he commissioned seventeen lawyers, with Tribonian at their head, with full authority to select from the works of their predecessors what they should consider the best authorities. They chose about forty out of Tribonian's library, most of them jurisconsults who had lived during that period of the empire which elapsed from Hadrian to the death of Alexander Severus. From the works of these writers, said to have amounted to two thousand treatises, the commission appointed by Justinian was to extract and compress all that was suited to form a methodical, complete, and never-failing book of reference for the student of law and the magistrate. Justinian gave Tribonian and his associates ten years to perform their task; but they completed it in three years. The work was styled 'Digesta,'* and also 'Pandectæ' ("em-

* The word 'Digesta' is Roman and signifies 'matter arranged.' The term had already been used by some of the Roman Jurists as the title of legal compilations. 'Pandectae' is Greek and means 'general receivers' or 'all containers.' Gibbon observes that 'Justinian was in the wrong

bracing all"), and was published in December, 533. It was declared by the emperor that it should have the force of law all over the empire, and should supersede in the schools of Rome, Constantinople and Berytus, all the text-books of the old jurists, which in future were to be of no authority.

The excerpts from some of the jurists are very few and insignificant. Those from Ulpian, who lived under the emperor Alexander Severus, whose counsellor he was, amount to more than one-third of the whole mass; the excerpts from Paulus, who likewise lived under Alexander Severus, are the next in amount; and those from Gaius, who lived under the Antonines; Salvius Julianus, the compiler of the Edictum Perpetuum [EQUITY, p. 844]; Papinianus, who lived under Septimius Severus and Caracalla; and Cervidius Scævola, who lived under the Antonines, are the next in amount.

The 'Digesta' is divided into 50 books, and each book is also divided into titles, and subdivided into sections. The following are some of the principal heads. Book i. lays down the general principles and the different kinds of law; it establishes the division of persons and of things; speaks of senators, and of magistrates and their delegates and assessors: ii. treats of the jurisdiction of magistrates; of the manner of bringing actions, of compromises after an action is commenced; iii. explains what kind of persons are allowed to sue in law, and it defines who are styled infamous, and as such not permitted to sue; it then treats of advocates, proctors, syndics, and others; iv. treats of restitution, compromises, and arbitrations, after which it speaks of innkeepers and others in whose custody we leave anything; v. treats of trials; and complaints against inofficious (inofficiosa) testaments; vi. treats of real actions and their various kinds to recover property; vii. treats of personal services (servitutes, as usus fructus); viii. speaks of real services both urban and praedial; ix. treats of damage or crimes committed by a slave, the action of the lex Aquilia, and the action against those who throw anything into the highway by which any one is wounded or injured; x. treats of mixed actions, the action of partition of an inheritance, &c.; xi. speaks of interrogatories, and of such matters as are to be heard before the same judge (judex). It also treats of run-away slaves, of dice-playing, bribery, corruption, and false reports; and lastly, of burials and funeral expenses; xii. explains the action for a loan, condictions, &c ; xiii. continues the subject of the preceding, and treats of the action upon pawn; xiv. and xv. treat of actions arising from contracts made by other persons and yet binding upon us; of the Senatus Consultum Macedonianum; and of the peculium; xvi. treats of the Senatus Consultum Velleianum, and of compensation, and the action of deposits; xvii. treats of the mandate, and of partnership (societas); xviii. explains the meaning and forms of the contract of sale, the annulling of this contract; and treats of gain or loss in the thing sold; xix. treats of bargains, of actions of hiring, of the action called æstimatoria, of permutation, of the action called præscriptis verbis, &c.; xx. treats of pledges and hypothecæ, of the preference of creditors, of the distraction or sale of things engaged or pawned; xxi. contains an explanation of the Curule Ædiles' edict concerning the sale of slaves and beasts, and also treats of evictions, warranties, &c.; xxii. treats of interest (usuræ), fruits, accessions to things, and of proofs and presumptions, and of ignorance of law and fact; xxiii. is upon betrothment (sponsalia), marriage, marriage portion (dos), and agreements upon this subject, and lands given in dos; xxiv. treats of gifts between husband and wife, divorces, and recovery of the marriage portion; xxv. treats of expenses laid out upon the dos, of actions for the recovery of things carried away by the wife or other person against whom there is no action for theft, of the obligation to acknowledge children and provide for them, on the Rescript De Inspiciendo Ventre, and lastly of concubines; xxvi. and xxvii. treat of tu-

when he used the two appellations as synonymous.' He adds, 'Is the word Pandects Greek or Latin, masculine or feminine? The diligent Brenckman will not presume to decide these momentous controversies (*Hist. Pandect. Florentin.*, p. 300-304).' Any diligent schoolboy may decide them.

torship and curatorship, and the actions resulting from them; xxviii. treats of testaments, of the institution and disinheriting of children, of the institution of an heir, of substitutions, &c.; xxix. treats of military testaments, of the opening of wills, and of codicils; xxx., xxxi., xxxii. treat of legacies and fiduciary bequests in general; xxxiii. and xxxiv. treat of particular legacies, of the ademption of legacies, and of the Regula Catoniana; xxxv. treats of legacies on condition, and of the Lex Falcidia; xxxvi. treats of the Senatusconsultum Trebellianum, and of fiduciary bequests, of the time when they become due, of the security to be given by the heir, &c.; xxxvii. treats of bonorum possessiones and other matters; xxxviii. treats of the services due by freedmen to their patrons, of the succession of freedmen, of the succession of intestates, of heredes Sui and Legitimi, and of the Senatusconsultum Tertullianum and Orphitianum; xxxix. explains the means which the law or the prætor provides for preventing any one from receiving damage to his property, also treats of donations generally, and of such as are made in contemplation of death (mortis causâ); xl. relates to manumission or freeing of slaves; xli. treats of the various ways by which the property of things is acquired, and of the acquisition and loss of possession, and lastly of lawful causes which authorize possession and lead to usucaption; xlii. treats of definitive and interlocutory sentences, of admissions (de confessis) at trial, of the cession of goods, of the causes of seizure and their effects, of the privileges of creditors; of curators appointed for the administration of goods, and of the revocation of acts done to defraud creditors; xliii. treats of injunctions (interdicta) and possessory actions; xliv. speaks of pleas (exceptiones) and defences, and of obligationes and actions; xlv. of stipulations, &c.; xlvi. of sureties, novations, delegations, payments, discharges, prætorian stipulations, &c.; xlvii. treats of private offences; xlviii. treats of public offences; then follow accusations, inscriptions, prisons; and lastly it treats of torture, punishments, confiscation, relegation, deportation, and of the bodies of malefactors executed; xlix. treats of appeals; and then gives an account of the rights of the exchequer (fiscus), and of matters relating to captives, military discipline, soldiers and veterans; l. treats of the rights of cities and citizens, of decuriones and their children, of public offices, of immunities, of deputies and ambassadors; of the administration of things belonging to cities, of public works, fairs, &c.; of taxes laid upon the provinces, and it concludes with the signification of legal terms (de verborum significatione) and certain rules or maxims of the old law (de diversis regulis juris antiqui). This is a sketch, but a very imperfect one, of the subject matter of this great compilation.

To treat of the merits and imperfections of the 'Digest,' would be a difficult task. With all its faults it is a valuable work, and much superior to the Code in its style, matter, and arrangement; it has, in great measure, embodied the wisdom of the best jurists of the best age of the Empire, men who grounded their opinions on the principles of reason and equity, and who for the most part were personally unconcerned and disinterested in the subjects on which they gave their answer. The mode in which the compilers executed their labour is the subject of a valuable essay by F. Bluhme (Blume) in a German Journal (*Zeitschrift für Geschichtliche Rechtswissenschaft*, vol. iv.). Tribonian and his colleagues are charged with making many interpolations, with altering many passages in the writings of their predecessors, substituting their own opinions, and passing them off under the name of the ancient jurists. Justinian himself acknowledged that he was obliged to accommodate the old jurisprudence to the altered state of the times, and to "make the laws his own." Another charge, which is however unsupported by evidence or probability, is, that Justinian and his servants destroyed the old text books that had served them for the compilation of the 'Pandects.' Long however before Justinian's time, the works of the ancient jurists were partly lost, and the vicissitudes of the ages that followed may easily have obliterated the rest. While the Digest was being compiled, Justinian commissioned Tribonian and

two other jurists, Theophilus and Dorotheus, to make an abridgment of the first principles of the law, for the use of young students who should wish to apply themselves to that science. This new work, being completed, was published under the name of 'Institutiones,' about one month before the appearance of the Digest. The Institutions were in a great degree based on an older work of the same description and title by Gaius, which has been discovered within the present century ('Gaii Institutionum Commentarii IV.,' by Göschen. The second edition was published in 1824). The Institutions are arranged in four books, subdivided into titles. As the law has three objects, persons, things, and actions, the first book treats of persons or status; the second and third, and first five titles of the fourth, treat of the law of things; and the remaining titles of the fourth book treat of actions.

Besides these three compilations, the Code, the Institutes, and the Digest, Justinian, after the publication of the second edition of his Code, continued to issue new laws or constitutions, chiefly in Greek, upon particular occasions, which were collected and published together after his death under the name of Νεαραί Διατάξεις, or Novæ or Constitutiones Novellæ, or Authenticæ. The Novellæ are divided into 168 Constitutiones, or, as they are now often called, Novels. The Novellæ, together with thirteen Edicts of Justinian, make up the fourth part of his legislation. There are four Latin translations of the Novellæ, all of which were made after Justinian's death; the third is by Haloander, printed at Nürnberg in 1531; and the fourth was printed at Basel by Hervagius in 1561. The first translation is that which is printed in some editions of the Corpus Juris opposite to the Greek text, and is very valuable, notwithstanding it has been stigmatized by some with the name "barbarous:" it is sometimes called Authentica Interpretatio or Vulgata, or Liber Authenticorum. It contains 134 Novellae distributed in 9 Collationes, which contain 98 titles. The version of Haloander is also printed in some editions of the Corpus Juris. The Novellæ made many changes in the law as established by Justinian's prior compilations, and are an evidence that the emperor had a passion for legislating.

Tribonianus, who was mainly instrumental in the compilation of Justinian, was a native of Pamphylia, but his father was from Macedonia. His learning was extensive: he wrote upon a great variety of subjects, was well versed both in Latin and Greek literature, and had deeply studied the Roman civilians, of which he had a valuable collection in his library. He practised first at the bar of the prætorian prefects at Constantinople, became afterwards quæstor, master of the imperial household, and consul, and possessed for above twenty years the favour and confidence of Justinian. His manners are said to have been remarkably mild and conciliating; he was a courtier, and fond of money, but in other respects he may have been calumniated by his enemies. His death took place A.D. 545. (Ludewig, *Vita Justiniani Magni atque Theodoræ, nec non Triboniani*, Halle, 1731; Zimmern, *Geschichte des Römischen Privatrechts bis Justinian*, Heidelberg, 1826; Hugo, *Lehrbuch der Geschichte des Römischen Rechts*, Berlin, 1832; *History of the Roman or Civil Law*, by Ferriere, translated by J. Beaver, London, 1724; Hommelius, *Palingenesia*; Brinkmannus, *Institutiones Juris Romani*, Schleswig, 1822; *System des Pandekten-Rechts*, by Thibaut, 7th ed., Jena, 1828; *Das Corpus Juris in's Deutsche übersetzt von einem vereine Rechtsgelehrter und herausgegeben von* Otto, Schilling und Sintenis, Leipzig, 1831; *Les Cinquante Livres du Digeste, &c., Traduits en Français par feu* M. Henri Hulot, Paris, 1805; *Pandectes de Justinien mises dans un nouvel ordre, &c., par R. J. Pothier, traduites par Bréard Neuville, révues et corrigées par* M. Moreau de Montalin, Avocat, Paris, 1810; Pothier's edition of the *Digest*, reprinted at Paris in 5 vols. 4to., 1818—20, is a useful edition. There is a very cheap edition of the *Corpus Juris* published in Germany, by Beck, 3 vols. small fol., Leipzig, 1829; the editions of the Corpus Juris and of the Institutes are very numerous. Gibbon's 44th chapter contains a useful sketch of the history of the Roman Law and of the

Legislation of Justinian; and an outline of the contents of the Institutes. The *Institutionen* of Dr. E. Böcking, 1st vol. Bonn, 1843, pp. 55-88, contain a sketch of the Legislation of Justinian, and an enumeration of the editions of the Corpus Juris and its parts.)

K.

KEEPER, LORD. [CHANCELLOR.]
KIDNAPPING. [LAW, CRIMINAL.]
KIN. [DESCENT; CONSANGUINITY.]

KING. The primary signification of this word is a person in whom is vested the higher executive functions in a sovereign state, together with a share, more or less limited, of the sovereign power. The state may consist of a vast assemblage of persons, like the French or the Spanish nation, or the British people in which several nations are included; or it may be small, like the Danes, or like one of the Saxon states in England before the kingdoms were united into one; yet if the chief executive functions are vested in some one person who has also a share in the sovereign power, the idea represented by the word *king* seems to be complete. It is even used for those chiefs of savage tribes who are a *state* only in a certain loose sense of the term.

It is immaterial whether the power of such a person is limited only by his own will, or whether his power be limited by certain immemorial usages and written laws, or in any other way; still such a person is a king. Nor does it signify whether he succeed to the kingly power by descent and inheritance on the death of his predecessor, just as the eldest son of a British peer succeeds to his father's rank and title on the death of the parent, or is elected to fill the office by some council or limited body of persons, or by the suffrages of the whole nation. Thus there was a king of Poland, who was an elected king; there is a king of England, who now succeeds by hereditary right.

In countries where the kingly office is hereditary, some form has always been gone through on the accession of a new king, in which there was a recognition on the part of the people of his title, a claim from them that he should pledge himself to the performance of certain duties, and generally a religious ceremony performed, in which anointing him with oil and placing a crown upon his head were conspicuous acts. By this last act is symbolised his supremacy; and by the anointing a certain sacredness is thrown around his person. These kinds of ceremonies exist in most countries in which the sovereign, or the person sharing in the sovereign power, is known as king; and these ceremonies seem to make a distinction between the succession of an hereditary king to his throne and the succession of an hereditary peer to his rank.

The distinction between a king and an emperor is not one of power, but it has an historical meaning. *Emperor* comes from *imperator*, a title used by the sovereigns of the Roman empire. When that empire became divided, the sovereigns of the West and of the East respectively called themselves emperors. The emperor of Germany was regarded as a kind of successor to the emperors of the West, and the emperor of Russia (who is often called the czar) is, with less pretension to the honour, sometimes spoken of as successor to the emperor of the East. But we speak of the emperor of China, where emperor is clearly nothing more than king, and we use emperor rather than king only out of regard to the vast extent of his dominions. Napoleon usurped the title of emperor; and we now sometimes speak of the British empire, an expression which is free from objection. The word imperium (empire) was used both under the Roman emperors and under the later Republic, to express the whole Roman dominion. [EMPEROR.]

The word *king* is of pure Teutonic origin, and is found slightly varied in its literal elements in most of the languages which are sprung from the Teutonic. The French, the Italian, the Spanish, and the Portuguese continue the use of the Latin word *rex*, only slightly varying the orthography according to the analogies of each particular language. *King*, traced to its origin, seems to denote one to whom superior knowledge had given superior power, allied, as it seems to be,

to *know, con, can;* but on the etymology, or what is the same thing, the remote origin of the word, different opinions have been held, and the question may still be considered undetermined.

There are other words employed to designate the sovereign, or the person who is invested with the chief power, of particular states, in using which we adopt the word which the people of those states use, instead of the word *king*. Thus there is the *Shah* of Persia, the grand *Sultan*, and formerly there was the *Dey* of Algiers. In the United States of America certain powers are given by the Federal Constitution to one person, who is elected to enjoy them for four years with the title of *President*. A *Regent* is a person appointed by competent authority to exercise the kingly office during the minority or the mental incapacity of the real king: this definition at least is true of a regent of the British empire.

A personage in whom such extraordinary powers have been vested must of necessity have had very much to do with the progress and welfare of particular nations, and with the progress of human society at large. When held by a person of a tyrannical turn, they might be made use of to repress all that was great and generous in the masses who were governed, and to introduce among them all the miseries of slavery. Possessed by a person of an ambitious spirit, they might introduce unnecessary quarrelling among nations to open the way for conquest, so that whole nations might suffer for the gratification of the personal ambition of one. The lover of peace and truth, and human improvement and security, may have found in the possession of kingly power the means of benefiting a people to an extent that might satisfy the most benevolent heart. But the long experience of mankind has proved that for the king himself and for his people it is best that there should be strong checks in the frame of society on the will of kings, in the forms of courts of justice, councils, parliaments, and other bodies or single persons whose concurrence must be obtained before anything is undertaken in which the interests of the community are extensively involved. In constitutional kingdoms, as in England, there are controlling powers, and even in countries in which the executive and legislative power are nominally in some one person absolutely, the acts of that person are virtually controlled by the opinion of the people, a power constantly increasing as the facilities of communication and the knowledge of a people advance.

Nothing can be more various than the constitutional checks in different states on the kingly power, or, as it is more usually called in England, the royal *prerogative*. Such a subject must be passed over in an article of confined limits such as this must be, else in speaking of the kingly dignity it might have been proper to exhibit how diversely power is distributed in different states, each having at its head a king. But the subject must not be dismissed without a few observations on the kingly office (now by hereditary descent discharged by a queen) as it exists in the British empire.

The English kingly power is traced to the establishment of Egbert, at the close of the eighth century, as king of the English. His family is illustrated by the talents and virtues of Alfred, and the peacefulness and piety of Edward. On his death there ensued a struggle for the succession between the representative of the Danish kings, who for a while had usurped upon the posterity of Egbert, and William, then duke of Normandy. It ended with the success of William at the battle of Hastings, A.D. 1066.

This is generally regarded as a new beginning of the race of English kings, for William was but remotely allied to the Saxon kings. In his descendants the kingly office has ever since continued; but though the English throne is hereditary, it is not hereditary in a sense perfectly absolute, nor does it seem to have been ever so considered. When Henry I. was dead, leaving only a daughter, named Maud, she did not succeed to the throne; and when Stephen died, his son did not succeed, but the crown passed to the son of Maud. Again, on the death of Richard I. a younger brother succeeded, to the exclusion of the son and daughter of an elder brother deceased. Then ensued

a long series of regular and undisputed successions; but when Richard II. was deposed, the crown passed to his cousin Henry of Lancaster, son of John of Gaunt, son of Edward III., though there were descendants living of Lionel, duke of Clarence, who was older than John among the children of Edward III. When the rule of Henry VI. became weak, the issue of Lionel advanced their claim. The struggle was long and bloody. It ended in a kind of compromise, the chief of the Lancastrian party taking to wife the heiress of the Yorkists From that marriage have sprung all the later kings, and the principle of hereditary succession remained undisturbed till the reign of King William III., who was called to the throne on the abdication of James II., when an act was passed excluding the male issue of James, the issue of his sister the duchess of Orleans, and the issue of his aunt the queen of Bohemia, with the exception of her youngest daughter the Princess Sophia and her issue, who were Protestants. On the death of Queen Anne this law of succession took effect in favour of King George I., son of the Princess Sophia.

Now the heir succeeds to the throne immediately on the decease of his predecessor, so that the king, as the phrase is, never dies. The course of descent is to the sons and their issue, according to seniority; and if there is failure of male issue, the crown descends to a female. The person who succeeds by descent to the crown of England, succeeds also to the kingly office in Scotland and Ireland and in all the possessions of the British empire.

At the coronation of the king he makes oath to three things:—that he will govern according to law; that he will cause justice to be administered; and that he will maintain the Protestant church. [CORONATION.]

His person is sacred. He cannot by any process of law be called to account for any of his acts. His concurrence is necessary to every legislative enactment. He sends embassies, makes treaties, and even enters into wars without any previous consultation with parliament. He nominates the judges and the other high officers of state, the officers of the army and navy, the governors of colonies and dependencies, the bishops, deans, and some other dignitaries of the church. He calls parliament together, and can at his pleasure prorogue or dissolve it. He is the fountain of honour: all hereditary titles are derived from his grant. He can also grant privileges of an inferior kind, such as markets and fairs.

This is a very slight sketch of the powers that belong to the kings of England; but the exercise of any or all of these powers is practically limited. The king cannot act politically without an agent, and this agent is not protected by that irresponsibility which belongs to the king himself, but may be brought to account for his acts if he transgress the law. The agents by whom the king acts are his ministers, whom the king selects and dismisses at his pleasure; but practically he cannot keep a ministry which cannot command a majority in the House of Commons; and virtually, all the powers of the crown, which make so formidable an array on paper, are exercised by the chief minister, or prime minister, for the time. [CABINET.] The king now does not even attend the cabinet councils; and the power which in theory belongs to his kingly office, and in fact in earlier periods was exercised by him, is now become purely formal. But though the king of England has lost his real power, he has obtained in place of it perfect security for his person, and for the transmission to his descendants of all the honour and respect due to the head of the most extensive and powerful empire on the globe.

KINGDOM. [KING.]

KING'S BENCH, COURT OF. [COURTS.]

KING'S LETTER. [BRIEF.]

KNIGHT, KNIGHTHOOD. During the feudal system the military strength of the nation was measured by the number and efficiency of the knights whom the king was able to summon to the field By distress [DISTRESS] the king could compel those who held knight's fees [KNIGHT'S FEES] to take upon themselves the order of knighthood, or to prove by their reception into that order that they had received the training, and possessed the arms and accoutrements, and

were, as to other requisites, qualified to take the field as knights. The statute, or rather the grant of 1 Edward II., enrolled in parliament, called 'Statutum de Militibus,' appears to have been made, partly as an indulgence upon the commencement of a new reign, and partly for the purpose of removing some doubts which existed as to the persons liable to be called upon to receive knighthood. The king thereby, in the first place, granted a respite until the following Christmas to all those who ought to have become, but were not, knights, and were then distrained ad arma militaria suscipienda. Further, it directed that if any complained in chancery that he was distrained, and had not land to the value of forty pounds in fee, or for term of his life, and was ready to verify that by the country (*i.e.* by the decision of a jury), then some discreet and lawful knights of the county should be written to, in order to make inquisition of the matter, and if they found it to be so, he was to have redress, and the distress was to cease. Again, where a person was impleaded for the whole of his land, or for so much of it that the remainder was not of the value of forty pounds, and he could verify the fact, then also the distress was to cease till that plea was determined. Again, where a person was bound in certain debts atterminated in the exchequer at a certain sum to be received thereof annually (*i.e.* respited, subject to payment by instalments), and the remainder of his land was not worth forty pounds per annum, the distress was to cease till the debt was paid. No one was to be distrained ad arma militaria suscipienda till the age of twenty-one, or on account of land which he held in manors of the antient demesne of the crown as a sokeman, inasmuch as those lands were liable to pay a tallage when the king's lands were tallaged. With respect to those who held land in socage of other manors, and who performed no servitium forinsecum, or service due upon the tenure, though not expressed in the grant, the rolls of chantery in the times of the king's predecessors were to be searched, and it was to be ordered according to the former custom; the same of clerks in holy orders holding any lay fee, who would, if laymen, have been liable to become knights. No one was to be distrained in respect of property of burgage tenure. Persons under obligation to become knights, who had held their land only a short time, were extremely old, or had an infirmity in their limbs, or had some incurable disease, or the impediment of children, or law-suits, or other necessary excuses, were to appear and make fine before two commissioners named in the act, who were to take discretionary fines from such disabled persons by way of composition. Under this regulation those who were distrained upon as holding land of the value of 40*l.* per annum either received knighthood or made fine to the king. The alteration in the nominal value of money occasioned by the increased quantity of the precious metals, and still more by successive fraudulent degradations of the standard, gradually widened the circle within which estates were subjected to this burthen; and in the sixteenth and seventeenth centuries lands which, in the reign of Edward II., were not perhaps worth 4*l.* per annum, had risen in nominal value to 40*l.*, and were often held by persons belonging to a totally different class from those who were designated by 1 Edward II. stat. 1, as persons having 40 libratas terræ.

That power of compelling those who refused to take upon themselves the order of knighthood, or rather of distraining them till they received knighthood, or compounded with the king by way of fine, which originally was a means of enforcing the performance of a duty to the crown, by persons holding a certain property in the country, was perverted into a process for extorting money from those who would have been exempt at common law, which regulated the amount of a knight's fee by the sufficiency of the land to support a knight, and not by its fluctuating nominal value in a debased currency. This oppressive, dishonest proceeding, which was occasionally resorted to in the reigns of Edward VI. and Elizabeth, was reduced into a system by the advisers of Charles I., and was adopted by him as one of the modes of raising money without resorting to a parliament.

The manner in which this antient prerogative was abused led to its total abolition. By 16 & 17 Car. I. c. 20, it is enacted that none shall be compelled, by writ or otherwise, to take upon him the order of knighthood, and that all proceedings concerning the same shall be void.

Persons have been required to take upon themselves the order of knighthood as a qualification for the performance of honourable services at coronations, in respect of the lands which they held by grand serjeanty.

Knighthood in England is now conferred by the king (or queen when the throne is filled by a female) by simple verbal declaration, attended with a slight form, without any patent or other written instrument. Sometimes, but rarely, knighthood is conferred on persons who do not come into the presence of royalty. This is occasionally done to governors of colonies, and other persons in prominent stations abroad. The lord-lieutenant of Ireland has a delegated authority of conferring this honour, which is very sparingly exercised.

Knighthood gives to the party precedence over esquires and other untitled gentlemen. "Sir" is prefixed to the baptismal name of knights and baronets, and their wives have the legal designation of "Dame," which is ordinarily converted into "Lady."

A rank correspondent to our rank of knighthood has existed in all Christian countries. The eleventh and twelfth centuries have been named as the period to which the order of knighthood as now existing may be traced. But in such an inquiry there are two difficulties: first, to state with sufficient precision what is the thing to be proved; and, secondly, to obtain evidence of the commencement of an institution which probably grew, almost insensibly, out of a state of society common to the whole of civilized Europe. It was a military institution, but there appears to have been something of a religious character belonging to it, and the order of knighthood, like the orders of the clergy, could be conferred only by persons who were themselves members of the order.

In early times some knights undertook the protection of pilgrims; others were vowed to the defence or recovery of the Holy Sepulchre. Some, knights-errant, roved about "seeking adventures," a phrase not confined to books of romance, of which there are many on this subject, but found in serious and authentic documents.

Besides those who are simply knights, there are knights who are members of particular orders or classes. These orders exist in most of the kingdoms of Europe, and have had generally for their founder a sovereign prince. Such are the order of the Golden Fleece, instituted by Philip duke of Burgundy; the order of the Holy Ghost, instituted by Henry the Third of France; the order of St. Michael, instituted by Louis the Eleventh of France. Of the foreign orders, which are very numerous, a full account may be found in a work in two volumes octavo, entitled 'An Accurate Historical Account of all the Orders of Knighthood at present existing in Europe,' a work printed abroad, the author of which was Sir Levet Hanson, an Englishman. Each of these orders has its peculiar badge, ribbons, and other decorations of the person. The three great British orders, the Garter, the Thistle, and Saint Patrick, belong to this class. [GARTER, ORDER OF.]

The order of the Thistle was instituted in 1540 by James the Fifth, king of Scotland; but it fell into decay, till in the reign of Queen Anne, 1703, it was revived. The number of knights was limited to thirteen, but in 1827 the number was increased to sixteen, all of whom are nobility of Scotland.

The order of St. Patrick was instituted in 1783. The knights were fifteen, increased in 1833 to twenty-two, who are peers of Ireland.

The order of the Bath differs in some respects from those just spoken of. [BATH, ORDER OF.]

There are also knights of the Guelphic order, and knights of the Ionian order of Saint Michael and Saint George.

KNIGHT OF SHIRE is the designation given to the representative in parliament of English counties at large, as distinguished from such cities and towns

as are counties of themselves (which are seldom, if ever, called shires), and the representatives of which, as well as the members for other cities and towns, are denominated citizens or burgesses. Though the knights of the shire always sat with the citizens and burgesses as jointly representing the third estate of the realm, as well during the time that the three estates, the spiritualty, the lords temporal, and the commons, sat together, as since, we find that grants were occasionally made by the knights to be levied on the counties, whilst separate grants were made by the citizens and burgesses to be levied upon the cities and boroughs. (*Rot. Parl.*) The wages payable to knights of the shire for their attendance in parliament, including a reasonable time for their going up and coming down, were four shillings a day, or double what was received by citizens and burgesses. At the close of every session of parliament the course was for the king, in dismissing them to their homes, to inform them that they might sue out writs for their wages, upon which each knight separately obtained a writ out of Chancery directed to the sheriff, mentioning the number of days and the sum to be paid, and commanding the sheriff to levy the amount. Upon this the sheriff, in a public county court, divided the burthen among the different hundreds and townships, and issued process to levy the amount, which, to the extent of the money levied, he paid over to the knight. The lands of the clergy, as well regular as secular, were exempted from contributing towards these expenses, because the clergy formed a distinct estate, and were represented in parliament by their prelates and the procuratores cleri, although the latter were, as Lord Coke expresses it, voiceless assistants only. All lay fees within the county were liable to contribute, except lands belonging to the lords and their men. The lords insisted that this exemption extended to every freeholder who held land within their baronies, seigniories, or manors, alleging that they served in parliament at their own expense for themselves and their tenants. And such was undoubtedly the practice; as by the Parliament Roll it appears that the commons frequently petitioned that the exemption should be confined to such lands as the lords kept in their own hands and occupied by their farmers or by their bond-tenants, or villeins. These requests however were met either by a simple refusal or by a statement by the king that he did not mean to lessen the liberties of the lords. If however a lord purchased land which had previously been contributory to the knight's wages, the liability continued. Freehold lands, held either by knight's service or in common socage, were liable to this burthen, but customary tenures in ancient demesne and tenures in burgage were exempt. In the county of Kent no socage land was contributable, the whole burthen being thrown upon those who held knight's fees, an anomaly against which the commons preferred many ineffectual petitions. Knights of the shire, and also their electors, were formerly required to be persons either resident or having a household in the county. This regulation, though confirmed by several statutes, had fallen into neglect, and was formally repealed in both its branches by 14 George III. c. 58. The removal of the latter part of the restriction has greatly added to the expense of county elections; and though the Reform Act, 2 Will. IV. c. 45, disfranchises out-voters in boroughs, it does not restore the old law as to non-resident county electors. (*Rot. Parl.*, vol. ii. 258, 287; iii. 25, 44, 53, 64, 212; iv. 352.)

KNIGHT'S FEE was land of sufficient extent and value to support the dignity of a knight, granted by the king, or some inferior lord, upon the condition that the grantee and his heirs should either perform the service of a knight to the grantor and his heirs, or find some other person to do such service. The quantity of land capable of supporting a knight naturally varied according to its quality and situation; and even the amount of income sufficient to meet the charges of a knight would fluctuate according to time and place. It is not therefore surprising that we find a knight's fee sometimes described as consisting of 800 acres, sometimes of 680; some-

times estimated at 15*l.*, sometimes at 20*l.*, and in later times at 40*l.* per annum. If the owner of a knight's fee deprived himself of the possession of part of his land by subinfeudation he remained liable to the feudal burthen attached to the tenure of the whole.

KNIGHT'S SERVICE, TENURE BY, otherwise called tenure in chivalry, or per service de chivaler, per servitium militare, was, from the times immediately succeeding the Norman Conquest in the eleventh century to the period of the civil war in the seventeenth, considered the first and the most important, as it was also the most general, mode of holding land and other immoveable property in England. The land held by this species of tenure was said to consist of so many knight's fees, feoda militis, *i. e.* so many portions of land capable of supporting the dignity of a knight. [KNIGHT'S FEE.] He who held an entire knight's fee was bound by his tenure, when called upon so to do, to follow his lord to the wars (under certain restrictions as to the place at which the service was to be performed), and to remain with him forty days in every year, or to send some other knight duly qualified to perform the services. From the owner of half a knight's fee twenty days' attendance only could be required; and the obligation attaching to the quarter of a knight's fee was satisfied by the performance of ten days' service. On the other hand, a person holding several knight's fees, whether forming one or several estates, was bound to furnish a knight in respect of each.

"Escuage," says Littleton, § 95, "is called in Latin *Scutagium*, that is, service of the shield; and that tenant which holdeth his land by escuage, holdeth by knight's service." The nature of the service has been already explained. This personal service was expressed by the parliament at a certain sum, which the tenant who did not render the service in person was bound to pay. On the subject of Escuage see Littleton, on 'Tenure by knight's service,' § 103, &c., which he defines as consisting in Homage, Fealty, and Escuage.

Besides this permanent liability to military service, the tenant was subject to other occasional burdens. The principal of these are the following incidental services:—First, *Aids* [AIDS]. Secondly, *Reliefs*, being a payment made by the heir in the nature of a composition for leave to enter upon land descending to him after he had attained his full age. Thirdly, *Primer Seisin*, or the right of the crown, where the lands were held of the king, to a year's profit of land descending to an heir who was of full age at the time of the death of his ancestor. Fourthly, *Wardship*, or the right to the custody of the body and lands of an heir to whom the land had descended during his minority, the king or other lord in such cases taking the profits of the land during the minority to his own use, or selling the wardship to a stranger if he thought proper. Fifthly, *Marriage*, or a right in the lord, where the land descended to an heir within age, to tender to him or her a wife or a husband; and if the heir refused a match without disparagement, *i. e.* without disparity of rank, crime, or bodily infirmity, the lord became entitled to hold the land as a security for payment by the heir of the amount for which the lord had sold or which he might have obtained for the marriage. Sixthly, *Fines upon Alienation.*

This system fell to the ground during the existence of the Commonwealth; and the abolition of this species of tenure was confirmed upon the Restoration, as it would have been absurd and dangerous to attempt a renewal of such oppressive burdens. Accordingly the 12th Car. II., c. 24, takes away tenure by knight's service, whether the lands are held of the crown or of a subject, together with all its oppressive fruits and peculiar consequences, and converts every such tenure into free and common socage. [SOCAGE.] Nothing can be more comprehensive than the terms of this act; besides generally abolishing tenure by knight's service, and its consequences, it descends into particulars, with a redundancy of words, which appear to indicate an extreme anxiety to extirpate completely all traces of knight's service. The statute, after taking away the court of wards and liveries,

enumerates wardships, liveries, primer seisins or ousterlemains, values and forfeitures of marriages, and fines, seisures, and pardons for alienation, and sweeps away the whole. But rents certain, heriots [HERIOT], suit of court and other services incident to common socage and fealty [DISTRESS], and also fines for alienation due by the customs of particular manors, are preserved. Reliefs for lands of which the tenure is converted into common socage, are saved in cases where a quit-rent is also payable.

L.

LABOUR. [WAGES; WEALTH.]

LADING, BILL OF. [BILL OF LADING.]

LAITY, persons not clergy; that is, the whole population except those who are in holy orders. All the lexicographers, we believe, agree in deriving it from the Greek word *laos* (λαός), the people. A *layman* is one of the laity. [CLERGY.]

LANCASTER, COUNTY PALATINE OF. [PALATINE COUNTIES.]

LANCASTER, DUCHY OF. [CIVIL LIST, p. 516.]

LAND, in English law, in its most restricted signification is confined to arable ground. In this sense the term is construed in original writs, and in this sense it is used in all correct and formal pleadings.

By the statute of Wills, 1 Victoria, c. 26, s. 26, a devise of the Land of the testator generally, or of the land of the testator in any place or in the occupation of any person mentioned in the will, is to be construed to include customary, copyhold, and leasehold estates to which the description will extend, as well as freehold estates, unless a contrary intention appear by the will. In its more wide legal signification land includes meadow, pasture, woods, moors, waters, &c.; but in this wider sense the word generally used is lands: the term land or lands is taken in this larger sense in conveyances and contracts.

In conveying the land, houses and other buildings erected thereon, as well as minerals under it, will pass with it, unless specially excepted. A grant of the vesture of certain land transfers merely a particular or limited right in such land, and the houses, timber, trees, mines, and other real things, which are considered as part or parcel of the inheritance, are not conveyed, but only such things as corn, grass, and underwood. Other limited rights, as fishing and cutting turf, may be granted, which confer no interest in the land itself, or, as it is called, the realty, but only the benefit of such particular privileges. But a grant of the fruits and profits of the land conveys also the land itself. Absolute ownership of land carries with it the right to the possession downwards of the minerals, waters, &c., and also upwards, agreeably to the maxim, "cujus est solum, ejus est usque ad cœlum." He who carries the workings of his mine from out of his own land into the land of his neighbour is guilty of trespass as much as if he disturbed the surface of his neighbour's land.

Land held in absolute ownership is expressed by the term *real* property, in contradistinction to *personal* property, which consists in money, goods, and other moveables. Land held for a number of years or other determinate time, is a chattel interest, but it is distinguished from other chattels by the name of Chattels Real. [CHATTELS.]

In some parts of England the word "land" is frequently used to denote the fee simple as distinguished from a less estate, without reference to the nature of the property. Thus it is usual to say, A has a lease of such an estate or such a house, but B has the land, *i. e.* the reversion or remainder in fee.

Land is legally considered as enclosed from neighbouring land, though it lie in the middle of an open field, and it may therefore be called a *close;* and the owner may subdivide this ideal close into as many ideal parcels as he pleases, and may, in legal proceedings, describe each of these parcels, however minute, as his close. An illegal entry into the land of another is called, in law, breaking and entering his close, and the remedy is by the action of trespass 'Quare clausum fregit;' it

having been necessary, when writs were framed in Latin and all common law proceedings were entered on the rolls of the court in that language, to insert the words 'Quare clausum fregit' in the king's writ, or the party's plaint, by which the action was commenced, and also in the declaration wherein the nature of the injury was more circumstantially detailed.

Land Derelict, or left dry by the sudden receding of the sea, or of the water of a navigable river, belongs to the king by his prerogative. Land formed by Alluvion, that is, by gradual imperceptible receding of any water, or by a gradual deposit on the shore, accrues to the owner of the adjoining land. The rules of English law as to Alluvion as stated in Bracton (fol. 9), are chiefly copied from the 'Digest' (41 tit. i. s. 7).

(*Doctor and Student;* Co. *Litt.;* Comyn's *Dig.*)

The definition of Alluvio by Gaius (ii. 70) is as follows—"that may be considered as added by Alluvio, which a river adds to our land so gradually, that we cannot calculate how much is added in each small interval of time; or, according to the common expression, what is added in such small portions as to escape our eyes." The English rule of law is the same. Land formed on the coast by the deposition of matter from the sea, is Alluvio, when the increase is so slow that it cannot be observed, though there may be a visible increase at the end of each year, and in the course of years a large piece of land may be thus formed (Rex *v.* Lord Yarborough, 2 B. & C. 91). Gaius proceeds to add—"but if a river carries off any part of your farm and brings it to mine, this part continues to be yours. If an island rise in the middle of a river, it is the common property of all those who on each side of the river possess farms near the bank; but if it is not in the middle of the river, it belongs to those who have farms beside the bank on that side which is nearest." (Compare Aggenus Urbicus, *Comment.* in Frontinum, *Pars Prior.*)

LANDING-WAITER, an officer of the customs whose duties consist in taking an accurate account of the number, weight, measure, or quality of the various descriptions of merchandise landed from foreign countries or colonial possessions. Landing-waiters likewise attend to the shipment of all goods in respect of which bounties or drawbacks are claimed. These officers are likewise called searchers.

LAND-TAX. [TAXATION.]

LAND-TAX, ROMAN. [TAXATION.]

LAPSE. [ADVOWSON; BENEFICE.]

LAW. In treating of the word *law*, we will first explain its etymology, and the etymology of the equivalent words in the principal languages of the civilized world; we will next determine the strict and primary meaning of law, together with its various secondary meanings; we will afterwards state the most important species of law, in the strict sense of the word; and finally, we will make a few remarks on the origin and end of law.

1. *Etymology of Law, and the equivalent words in other languages.*—In the Greek language the most antient word for law is *themis* (θέμις, which contains the same root as τίθημι), meaning 'that which is established or laid down.' In Homer θέμις signifies a rule established by custom, as well as by a civil government: it also signifies a judicial decision or decree, a legal right, and a legal duty. (*Iliad,* i. 238; *Od.* xiv. 56; *Od.* xvi. 403; *Il.* xi. 770; *Il.* ix. 156, 298; and see Passow in v.) Θεσμὸς and τεθμὸς are two very antient Greek words, having the same origin and meaning as Θέμις. The common Greek word for law, after the Homeric period, is νόμος, which first occurs in the 'Works and Days' of Hesiod (v. 274-386, Gaisford), and contains the same root as νέμω, to *allot* or *distribute.* The only word which the Greek language possessed to signify a *legal right* was δίκαιον, or δικαίωμα. (Hugo, *Geschichte des Römischen Rechts,* p. 962, ed. xi.)

Jurisprudence was never cultivated as a science by the Greeks before the loss of their independence. Many causes concurred to prevent the Greeks from adding jurisprudence to the numerous subjects which they first subjected to a scientific treatment. The chief of these causes was perhaps the generally *arbitrary* character of the Greek tribunals, both in the demo-

cratic and oligarchical states. The Lacedæmonians had no written laws (Aristotle's account of the jurisdiction of the Ephors, in *Polit.* ii. 9; compare Müller's *Dorians*, b. iii. ch. 6, s. 2; ch. 11, s. 2; and Justinian's *Institutes*, lib. i. tit. 2, s. 10), and they were besides too great contemners of learning and science to cultivate law in a systematic manner. The Athenians possessed a considerable body of written laws, and, with their extraordinary talent both for speculation and action, they would probably have contributed something towards reducing law to a science, if the large numbers of the judges (δικασταί) in their courts had not led to a popular and rhetorical treatment of the questions which came before them, and, by diminishing the sense of personal responsibility, facilitated arbitrary decisions. (Xen., *Mem.* iv. 4. 4.)

For the first scientific cultivation of law the world is indebted to the Romans. 'How far our ancestors,' says Cicero, 'excelled other nations in wisdom, will be easily perceived on comparing our laws with the works of their Lycurgus, Draco, and Solon; for it is incredible how rude and almost ridiculous every system of law is, except that of Rome.' ('Incredibile est enim, quam sit omne jus civile, præter hoc nostrum, inconditum ac pœne ridiculum.' *De Orat.*, i. 44.) Apart from the general ability of the Romans in the business of civil and military government, the systematic cultivation of law in Rome is perhaps owing chiefly to the fact that the Roman tribunals were composed of a single judge, or magistratus. (Hugo, *Ibid.*, p. 345.) The persons filling the offices of *prætor urbanus* and *prætor peregrinus* (the magistrates who ultimately exercised the chief civil jurisdiction) were changed annually; and it was found convenient that every new prætor should, on his accession to his office, publish an authentic statement of the rules which he intended to observe in administering justice. In process of time these rules, known by the name of the *prætor's edict*, were handed down, with little alteration, from one prætor to another; and they furnished a text for the commentaries of the Roman lawyers, many of whose expository writings were drawn up in the form of treatises *ad edictum*. [EQUITY, p. 844.]

The scientific cultivation of law among the Romans naturally led to the formation of a technical legal vocabulary in their language. The Latin is accordingly very rich in legal terms, many or most of which have been retained in the modern languages of western Europe, especially in those countries whose legal systems are founded on the Roman law. The only terms however with which we are at present concerned are those which denote the most general notions belonging to the subject of jurisprudence. *Lex*, which has the same etymological relation to *lego* that *rex* has to *rego*, meant properly a measure proposed by a magistrate in the *comitia*, or assembly of the people. A *lex* was not necessarily a rule, and might relate to a special case (Hugo, *Ibid.* p. 327); but as most of the *leges* proposed by the magistrates were general, the word came to signify a written law. *Jus* denoted law generally, whether written or unwritten: it also denoted a legal right or faculty. *Lex* signified "*a* law;" *jus* "law" generally. (Austin, *Province of Jurisprudence*, p. 307.)

The Romance languages have retained the word *lex* in the Latin acceptation (*legge* Italian, *ley* Spanish, *loi* French). They have however lost the word *jus* (though they retain many of its derivatives), and have substituted for it words formed from the passive participle of *dirigo* (*diritto* Italian, *derecho* Spanish, *droit* French), probably after the analogy of the German *recht*.

Nearly all the Teutonic languages (including the Anglo-Saxon) possess some form of the word *recht*, with a double sense equivalent to the Latin *jus*, namely, *law* and *faculty*. The modern English uses *right* in the sense of *faculty* alone. The High German has *gesetz* (from *setzen*, "to place," like θεσμὸς and θέμις), for a written law equivalent to *lex*. The Low German languages have, instead of *gesetz*, a word formed from *legen*, to lay down, which in Anglo-Saxon is *laga* or *lag*, in modern English *law*. The word *law* however, in modern English, has not the limited sense of *gesetz*, but is coextensive with the Latin *jus*, when the latter does

not signify *faculty*. We do not wish to dwell unnecessarily on these etymologies, but we will shortly notice that, besides *regt*, the Dutch language has the word *wet* in the sense of *law*. This word is derived from the antient *withan*, Gothic, "to bind," and is equivalent etymologically to the Latin *obligatio*. The English verb to *wed* is the same word. *Ehe*, which signifies *marriage* in modern German, originally meant *law* or *ordinance* (*Nibelungen Lied*, v. 139, 5061); so that the Dutch *wet* and the English *wed* stand to one another in the same relation as the antient and modern senses of *ehe*.

2. *Proper and improper Meanings of the word Law.*—A *law*, in the strict sense of the word, is a general command of an intelligent being to another intelligent being.* Laws established by the sovereign government of an independent civil society are styled *positive*, as existing by *positio*. [SOVEREIGNTY.] When law is spoken of simply and absolutely, *positive* law is always understood. Thus in such phrases as "a lawyer," "a student of law," "legal," "legality," "legislation," "legislator," &c., positive law is meant. Positive law is the subject-matter of the science of jurisprudence. [JURISPRUDENCE.] Every general command of a sovereign government to its subjects, however conveyed, falls under the head of positive laws. The general commands of God to man (whether revealed or unrevealed) are called the laws of God, or the Divine law: they are sometimes also known by the name of "natural law," or "law of nature." The Divine law (according to the phraseology just explained) is the standard to which all human laws ought to conform. On the mode of determining this standard some remarks will be made lower down.

Besides positive law, which is known to be a command enforced by a sanction,* and the Divine law, which is presumed to be so, there are some classes of laws which are not commands, though they bear an analogy more or less remote to laws properly so called. Thus by the term "law of nations," or "international law," are signified those maxims or rules which independent political societies observe, or ought to observe, in their conduct towards one another. An independent political society is a society which is not in the habit of rendering obedience to a political superior; consequently, an independent political society cannot receive a command or be subject to a law properly so called. But inasmuch as the maxims of international morality are general, and determine men's wills by the fear of provoking the hostility of other independent societies against their own country, there is a close analogy between the so-called "law of nations" and positive law. We may here remark that the term "jus gentium," as used by the Roman lawyers, has a different meaning from "law of nations," as used in modern times. According to their phraseology, *jus civile* consists of those rules of law which are peculiar to any independent state; *jus gentium* consists of those rules of law which are common to all nations. ("Quod quisque populus ipse sibi jus constituit, id ipsum civitatis est, vocaturque *jus civile*, quasi proprium jus ipsius civitatis. Quod vero natura vel ratio inter omnes homines constituit, id apud omnes peræque custoditur, vocaturque *jus gentium*, quasi quo jure omnes gentes utuntur." *Inst*, lib. i. t. 2, s. 1, and Gaius, i. 1.) In the language of the Roman jurists, *jus naturale* is commonly equivalent to *jus gentium*. (See *e.g. Inst.*, lib. i. t. 2, s. 11.) In some of the Roman historians Jus gentium has a meaning which at least approaches to the 'law of nations.' (Liv. ii. 4, vi. 1.) Concerning a peculiar meaning attributed to *jus naturale* in a passage of Ulpian (*Dig.*, lib. i. tit. 1, fr. 1, s. 3; *Inst.*, lib. i. tit. 2, *ad. init.*), see the remarks of Mr. Austin, in

* 'Lex nil aliud quam *regula imperans*,' says Bacon, *De Augm. Scient.* lib. viii. aph. 83. The word *regula*, or *rule*, is ambiguous: it sometimes signifies a *norma*, maxim, or canon simply: it sometimes signifies a *norma*, maxim, or canon, accompanied with a command. Moreover, it is a metaphor to say that the rule or *norma* itself commands. Bacon's definition would therefore be more precise if expressed as follows: "Lex est norma summi imperantis."

* A sanction is the evil with which any one is visited in consequence of disobedience to a command.

his 'Province of Jurisprudence,' p. 108. Other classes of laws not imperative, but having as close an analogy to laws proper as the maxims composing international law, are the "law of honour" and the "law of fashion;" the laws of certain sports and games, such as the laws of the turf, the laws of whist, cricket, chess, &c., also stand in a similar predicament.

The term *law* is also employed in certain cases where the analogy to laws properly so called is much more remote. Instances of this usage are such expressions as the "laws of motion," the "law of attraction or gravitation," the "law of mortality" in a given country, the "law of population," the "laws of human thought," the "law of a mathematical series." In laws of this class (which may be styled "metaphorical laws") there is no command and no intelligence to work upon; nothing more is signified than that there is a certain uniformity of phenomena, analogous to the uniformity of conduct produced in men by the operation of a law properly so called.

3. *Species of Positive Law.*—The positive laws of any country, considered as a system, may be divided with reference to their *sources* (or the modes by which they become laws) into *written* and *unwritten*. This division of laws is of great antiquity; the expression *unwritten laws* occurs in Xenophon's 'Memorabilia,' in a conversation attributed to Socrates (iv. 4, 19), in the 'Antigone' of Sophocles (v. 450-7; comp. Aristot. *Rhet.* i. 13, 2), in the 'Republic and Laws of Plato' (v. 563 and 793, ed. Steph.), and in Demosthenes (*Aristocrat.*, p. 639, ed. Reiske). In these passages it appears to signify those rules of law or morality which (being founded on obvious dictates of utility) are nearly common to all countries. Unwritten law, in this sense, nearly corresponds with the *jus naturale* of the Roman lawyers. In the language of the Digests and the Institutes, the terms *written* and *unwritten law* ("jus quod constat ex scripto aut ex non scripto") are used in a more precise manner, to signify those laws which had been promulgated by the Roman legislature in writing, and those rules of law which had been tacitly adopted by the same legislature from usage.* For (as it is stated in a passage of the Digests) "since the laws derive their binding force from nothing but the decision of the people, it is fitting that those rules which the people have approved of without reducing them into writing should be equally obligatory. For what difference is there whether the people declares its will by vote or by its conduct?" ("Quum ipsæ leges nulla alia ex causa nos teneant quam quod judicio populi receptæ sunt, merito et ea quæ sine scripto populus probavit, tenebunt omnes; nam quid interest, suffragio populus voluntatem suam declaret, an rebus ipsis et factis?" *Dig.*, lib. i., t. 3, fr. 32.)

Sir William Blackstone divides the law of England into the "*lex non scripta*, the unwritten or common law, and the *lex scripta*, the written or statute law." "The *lex non scripta*, or unwritten law (he further says), includes not only general customs, or the common law properly so called, but also the particular customs of certain parts of the kingdom; and likewise those particular laws that are by custom observed only in certain courts and jurisdictions." "When I call these parts of our law *leges non scriptæ* (he proceeds to say), I would not be understood as if all those laws were at present merely *oral*, or communicated from the former ages to the present solely by word of mouth. It is true indeed that, in the profound ignorance of letters which formerly overspread the whole Western world, all laws were entirely traditional, for this plain reason, because the nations among which they prevailed had little idea of writing.... But with us, at present, the monuments and evidences of our legal customs are contained in the records of the several courts of justice, in books of reports and judicial decisions, and in treatises of learned sages of the profession, pre-

* The distinction of law into written and unwritten does not seem to have been regularly made by the Roman jurists; for it does not occur in Gaius, from whose Commentaries the substance of the second title of the first book of the Institutes is borrowed. The distinction in question is introduced, both in the Digests and the Institutes (i. tit. 2), with a reference to the Greek writers, doubtless philosophers.

served and handed down to us from the times of highest antiquity. However, I therefore style these parts of our law *leges non scriptæ*, because their *original* institution and authority are not set down in writing." (1 *Com.*, p. 63.) In this passage Blackstone clearly explains that unwritten law is so called, not because it does not exist in writing, but because it was not promulgated by the legislature in a written form. His statement of the sorts of laws severally comprehended by the classes of written and unwritten law in England is erroneous. Written law comprehends not only the statutes made by the parliament or supreme legislature, but also the written regulations issued by subordinate legislatures, as orders in council, and rules of court made by the judges. Unwritten law, moreover, comprehends not only the common law which is administered by the courts styled "courts of common law," but also the greatest part of the law styled "equity," which is administered by the courts styled "courts of equity."

Unwritten law has been called by Mr. Bentham *judge-made law;* a name which correctly denotes the mode by which it becomes law.

It may be remarked that a written law is called a law, but that a rule of unwritten law is never called *a* law. This phraseology corresponds to the distinction between *lex* and *jus*, and *gesetz* and *recht*, which was explained above.

Positive laws are also divided, according to their *source*, into laws made by *supreme*, and laws made by *subordinate* legislatures. In other words, laws may be issued by the sovereign legislature, or by functionaries who derive their authority from the sovereign legislature.

The *sources* of law are not unfrequently confounded with its *causes;* in other words, with the facts which induce the sovereign to invest certain maxims with the legal sanction. Thus it is fancied that a rule of customary or consuetudinary law exists as law, by virtue of custom or usage, and not by virtue of the authority of the sovereign or his representative, who has imparted to it a binding force. This subject is clearly explained in Mr. Austin's 'Outline of a Course of Lectures on General Jurisprudence,' pp. 10, 11.

The laws of a state, considered as a system, may be divided, with reference to their *subject-matter*, into *public* and *private*. The division of *jus* into *jus publicum* and *jus privatum* originated with the Roman jurists, and occupies a conspicuous station at the beginning of the Digests and Institutes. No trace of this division exists, as far as we are aware, in any Greek author. *Jus publicum* is defined to be "quod ad statum rei Romanæ spectat," "quod in sacris, in sacerdotibus, in magistratibus consistit." *Jus privatum* is that "quod ad singulorum utilitatem pertinet." The institutional treatises of the Roman lawyers appear to have been confined to *jus privatum*. The Institutes of Justinian do not touch upon *jus publicum*, except in the final chapter *De Publicis Judiciis*, and this chapter is wanting in the Commentaries of Gaius, on which the Institutes of Justinian are mainly founded. Hence it appears that the Roman lawyers included under *jus publicum* not only the powers of the sovereign, and the rights and duties of persons in public conditions, but also criminal law. Their definition of *jus publicum*, however, does not properly include criminal law, and the term, as used by later writers, has not in general this extension. *Publicus* is the adjective of *populus*, and signifies that which belonged to the sovereign body of citizens; hence *jus publicum* signified that law which concerned the government of Rome, and its magistrates and other functionaries. *Privatus* seems to have meant originally that which was *separated* or *set apart* from any common stock; hence it came to signify that which did not concern directly the *public* or state.

The formal division of law into public and private is not to be found in the institutional treatises of English Law. It is however used by Lord Bacon, in his treatise 'De Augmentis,' lib. viii. Aph. 80; where he advises that, after the model of the Roman jurists, *jus publicum* should be excluded from institutional treatises.

Sir W. Blackstone, in the first book of his 'Commentaries,' treats of the rights

and duties of persons, in their public and private relations to each other (pp. 146, 422). The former branch of this division, which occupies chapters 2 to 13, comprehends *jus publicum*, in its limited sense, which nearly corresponds to the English term "constitutional law." The *droit politique* or *constitutionnel* of Mr. Bentham, in his 'Traités de Legislation' (tom. i. p. 147, 325-6, ed. 1802), is also equivalent to *jus publicum*, in its strict sense. (Austin's *Outline*, p. lxvii.)

Positive law is further divided, with reference to its subject, into the *law of persons* and the *law of things*. The Roman jurists, who were the authors of this division, arranged these two classes under the head of *jus privatum*, together with a third, viz. the *law of actions*, or of judicial procedure. A full explanation of this important division is not consistent with the purpose of the present article: we extract a brief and lucid statement of it from Mr. Austin's 'Outline' already cited. "There are certain rights and duties, with certain capacities and incapacities to take rights and incur duties, by which persons, as subjects of law, are variously determined to certain classes. The rights, duties, capacities, or incapacities, which determine a given person to any of these classes, constitute a *condition*, or *status*, which the person occupies, or with which the person is invested. The right, duties, capacities, and incapacities, whereof *conditions* or *status* are respectively constituted or composed, are the appropriate matter of the department of law which commonly is named the *law of persons: jus quod ad personas pertinet*. The department, then, of law which is styled the law of persons is conversant about *status* or *conditions*; or (expressing the same thing in another form) it is conversant about persons (meaning *men*) as bearing or invested with *persons* (meaning *status* or *conditions*). The department of law which is opposed to the law of persons is commonly named the *law of things; jus quod ad res pertinet*. The law of things is conversant about matter, which may be described briefly in the following manner: it is conversant about rights and duties, capacities and incapacities, in so far as they are *not* constituent or component parts of *status* or conditions. It is also conversant about persons, in so far as they are invested with, or in so far as they are subject to, the rights and duties, capacities and incapacities, with which it is occupied or concerned" (pp. xvi., xvii.). The most important conditions or *status*, composing the law of persons, are *public* or *political*, and *private*. The former species includes all persons sharing the sovereign power and all public functionaries; the latter includes the conditions of husband and wife, parent and child, master and servant, guardian and ward, &c. The term *jus publicum*, when used in a precise sense, is equivalent to the former of these species. It may be remarked, that the erection of certain aggregates of rights and duties into a *status* is more or less arbitrary; and that the jurist must be guided by considerations of method and convenience, concerning which no very precise rules can be laid down. For example, in a country where a large sum of money was expended by the government in the relief of the poor, and where a large part of the working classes consisted of *paupers* (or persons receiving legal relief), it might be expedient to make the rights and duties of a pauper a condition, or *status*, in the law of persons. In a country where the legal relief of the poor was insignificant in amount, the rights and duties of a pauper would be more conveniently introduced in the law of things. Sir W. Blackstone, misled by the ambiguity of the Latin word *jus*, has rendered *jus personarum* and *jus rerum* by "*rights* of persons," and "*rights* of things." The origin of this portentous blunder is explained in Mr. Austin's 'Outline,' p. lxiii.

Positive law is also divided, with reference to the legal consequences of a breach of legal duty, into *civil* and *criminal*.

Civil law is that department of law in which every breach of a duty may be made the subject of a legal proceeding, for the purpose of conferring on the person wronged a right from the enjoyment of which he is excluded by the defendant, or of obtaining from the defendant compensation for a right violated by him.

Criminal law is that department of law in which every breach of duty may be made the subject of a legal proceeding instituted by the sovereign or his representatives, for the purpose of inflicting punishment on the person charged with the breach of duty. The scope of a civil action is the redress of the plaintiff, by conferring on him the right, or compensation for the violation of a right, which he claims from the defendant. The scope of a criminal action is to inflict punishment on the defendant for the breach of a legal duty which is imputed to him. *Penal* law is not identical with *criminal* law; for an act or omission may be liable to legal punishment in consequence of an action instituted by a *private person*. The action in English law termed a *qui tam* action is partly a civil and partly a penal, but is in no respect a criminal action. It has been already stated that the term *jus civile* originally signified the peculiar law of Rome. In modern times it has acquired, in many or most civilized countries, the limited sense which has just been explained. The term *crimen* was used by the Roman jurists as equivalent to *delictum publicum*, that is, a delict which was the subject of a *judicium publicum* (Hugo, *Ib.* pp. 368, 959). (On the contents of the French *Code civil* see CODES, LES CINQ.) *Civil* and *Criminal* delicts or injuries are terms which, in strictness, are unknown to the English law. A criminal proceeding is, in the language of the English law, styled a *plea of the crown*, as being a penal action instituted by the crown. The court recently created by statute in London is however styled the Central *Criminal* Court. By the *civil law*, in England, is commonly understood the Roman law generally, or that portion of it which is received in the ecclesiastical courts.

Law is sometimes opposed to *equity*. *Equity*, in this sense, implies an arbitrary or discretionary power in the tribunal to decide, not according to prescribed rules of law, but according to its own conceptions of moral justice. In the language of the English law, *common law* is opposed to *equity*, concerning which opposition see EQUITY. *Common law* is so denominated as being founded on usages common to the whole nation, and not peculiar to a certain district. (1 Blackst. *Comm.*, p. 67-8.) In like manner, "the Book of *Common* Prayer" is so designated in order to distinguish it from forms of prayer intended for *private* devotion. It may be remarked, that, in the language of the Roman law, *jus civile* is opposed to *jus prætorium* (the law made by the judicial legislation of the prætors), in the same manner that, in the language of the English law, *common law* is opposed to *equity*.

A *law* is likewise opposed to a *privilegium*. *Privilegium* is an ancient term of the Roman law, inasmuch as it occured in the Twelve Tables. (Cicero, *Leg.*, iii. 19.) It signified, according to its etymology, a measure directed at a single person (*hominem privum*), as distinguished from a law which applies to *classes* of persons; for as it is stated in a fragment of Ulpian preserved in the Digests, "jura non in singulas personas, sed generaliter constituuntur." (Lib. i. tit. 3, fr. 8.) The latter part of the word *privilegium* is connected with *lex*; but we have already stated that *lex* originally did not necessarily signify a rule. More properly, however, a *privilegium* signifies a special command of the sovereign, not founded on an existing general command or law. Such a *privilegium* may either be beneficial to the person or persons affected by it, as an exemption from all personal actions which the king of England can (or could) grant by his *writ of protection* (Blackst. 3 *Com.*, p. 289); or it may deprive him of some of his rights, or inflict some punishment upon him. The difference between a law and a *privilegium* is explained by Sir W. Blackstone as follows: "Municipal (*i.e.* positive) law is a *rule*; not a transient sudden order from a superior to or concerning a particular person, but something permanent, uniform, and universal. Therefore a particular act of the legislature to confiscate the goods of Titius, or to attaint him of high treason, does not enter into the idea of a municipal law; for the operation of this act is spent upon Titius only, and has no relation to the community in general; it is rather a sentence than a law. But an act to

declare the crime of which Titius is accused shall be deemed high treason; this has permanency, uniformity, and universality, and therefore is properly a rule" (or law). (1 *Com.*, p. 44.) The distinction here adverted to is that meant by the Greek writers when they speak of governments administered according to law, and governments administered not according to law. (See particularly Aristotle, *Polit.*, iv. 4, 5.) In the latter class of states, the acts of the government were a succession of *privilegia* (generally styled by the Greeks ψηφίσματα, although ψηφίσματα were often *laws*, strictly so called). Montesquieu's distinction between monarchy and despotism is founded upon the same principle (*Esprit des Lois*, ii. 1). Government by *privilegia* is properly called *arbitrary* government, the government being administered not according to rules, but according to the *arbitrium* of the sovereign one or many.

Concerning the difference between the making of laws and the execution of them, or (as they are termed) the *legislative* and *executive* functions of government, see LEGISLATION.

Law is sometimes opposed to *fact;* that is to say, the rule of law is distinguished from the facts or events to which it is applied in practice. In this sense it is said that every one is presumed to know the law; whereas ignorance of the fact is an excuse. (For the doctrines of the Roman law on this subject, see *Dig.*, lib. xxii. t. 6.) The distinction between law and fact is important in our system of jurisprudence, with reference to trial by jury; for, according to the theory of our law, the judge decides concerning the law, and the jury concerning the fact. This maxim is however little more than theory; for in practice the jury, by its power of returning a general verdict, is judge both of the law and the fact. [JURY] On certain questions which necessarily arise in the administration of justice, and which are questions neither of law nor of fact (such as "due diligence," "reasonable notice," "probable cause," &c.) see an article in the *Law Magazine*, vol. xii. pp. 53-74.

Laws, considered singly, have been divided into numerous species, as declaratory, remedial, penal, repealing, &c. laws. Concerning these see Austin's *Province of Jurisprudence*, p. 22, and Dwarris *On Statutes*, c. 10.

4. *Origin and End of Positive Law.*—It has been above stated that all positive laws are commands, direct or indirect, of the person or persons exercising supreme political power in an independent society. Consequently the notion that positive laws are derived from a compact between sovereign and subjects (styled the *original* or *social contract*) is a delusion.

The proper end of positive law is the promotion of the temporal happiness, or well being, of the community over which the law extends. Thus Aristotle, in his 'Politics,' says that "political society was formed in order to enable men to live, and it continues to exist in order that they may live happily" (1. 2.). "Finis et scopus (says Lord Bacon) quem leges intueri atque ad quem jussiones et sanctiones suas dirigere debent, non alius est quam ut *cives feliciter degant*" (*De Augm.*, lib. viii. Aph. 5.) The meaning of Aristotle and Bacon, in the passages just cited, was no other than that expressed by Mr. Bentham in his well-known formula, that the end of political government is "the greatest happiness of the greatest number."

We have stated that the proper end of positive law is the promotion of the *temporal* happiness of the community. The end of the political union is the promotion of the happiness of its members in the present state of existence; that is to say, in the existence which is comprehended between birth and death. The promotion of men's happiness in the existence which commences after death is the end of the religious or ecclesiastical union. (See Warburton's *Divine Legation*, b. 1, s. 2, vol. i. p. 215, 8vo. ed.)

From the benevolence of the Deity, it is presumed that those rules which tend the most to produce the happiness of his creatures are most agreeable to him; and consequently the term "Divine law" (also called natural law) is used to signify those maxims to which human law ought to conform. In the vast countries where the Mohammedan and Brahminical religions prevail, a great proportion of

the positive law is supposed to be derived from the direct revelation of a supernatural being; and therefore the Divine law and the positive laws of the state in great measure coincide. The Christian dispensation however does not (like the Jewish) contain any system of rules out of which a body of positive law can be formed, or which can be enforced by a civil government. Consequently, in Christian countries a very small part of positive law is founded upon precepts derived from immediate revelation: the far greater part of positive law is or ought to be fashioned upon rules of Divine law, which are only discoverable by a process of inference from the phenomena of human society.

LAW, CRIMINAL. The object of the English as of every other system of Criminal Law is the prevention of injuries by the terror of punishment; but it is not every injury the commission of which the law thinks fit to prevent by such means; in most cases it is satisfied with the redress of injuries after they have been committed, by either restoring the party injured to his right, where that is possible, or by giving him compensation in damages. In law, an injury is any violation of a legal right or omission of a legal duty: a crime, then, may be defined to be such a violation of a legal right or omission of a legal duty as subjects the person guilty of it to punishment. Such acts or omissions for which the law affords redress only have, in England, been usually denominated civil injuries as contradistinguished from crimes. It is to be observed however, that, in strictness, every crime includes an injury, in respect of which some individual or the public may be entitled to redress. In felony, indeed, such injury is said to be merged in the crime; but this doctrine appears to have originated in the circumstance of all felonies having, with one or two exceptions, been originally punishable with death and having worked a forfeiture of all the offender's property, and so rendered redress impossible.

Crimes, according to the English law, are divisible into two great classes, which depend upon the mode of proceeding peculiar to each, viz. into

1st. Such as are punishable on indictment or information (the common law methods of proceeding).

2dly. Such as are punishable on summary conviction before a justice or justices of the peace or other authorized persons, without the intervention of a jury (a mode of proceeding derived entirely from special statutory enactments).

It is proposed, in the first place, to treat of offences punishable on indictment or information, and afterwards to shortly refer to those punishable on summary conviction.

Offences punishable on Indictment or Information.

Indictable offences are distributable into four classes or divisions, viz.: Treasons, Præmunires, Felonies, and Misdemeanors. Persons who commit the offences which constitute the last-mentioned division may also be prosecuted by criminal information instead of being indicted.

The distinction between these classes is, for the most part, a merely arbitrary one, without any apparent reference to rule or principle, the consequence of which is that offences in their nature wholly undistinguishable are, in many instances, separated and subjected to punishments widely disproportionate, and to forms of procedure widely dissimilar. In fact, the only real distinguishing feature between one class of crimes and another, at the present day, is to be found in certain peculiarities of punishment and procedure incident to each. Formerly, however, the classes of crimes were marked by distinctive characteristics; but they have subsequently, either by artificial constructions of the courts or by legislative enactment, been made to embrace offences of a very different nature from those originally included within them. For instance, the crime of treason, whether high or petit, implied a violation of the allegiance due from an inferior to a superior. In the case of high treason, so called "by way of eminent distinction," it was the violation of the allegiance due from a subject to his liege lord and sovereign; and in case of petit treason, which was limited to the murder

of a husband by his wife, a master by his servant, or an ecclesiastic by his inferior who owed him faith and obedience, it was the breach of the allegiance of private and domestic faith.*

The characteristic above pointed out can no longer be traced in many of the various constructive treasons which have been from time to time created by the courts. It will be sufficient here to give a single illustration of the mode in which the law of treason has been stretched to reach cases totally inconsistent with its original design. By one of the clauses of the statute of treasons (25 Edw. III. c. 2) it is declared to be treason *to levy war against the king*. A riotous assembly attempting by force to redress a public grievance, as, for example, to pull down *all* inclosures or to burn *all* meeting-houses, has been held to be *a levying of war* within the meaning of this clause, although there has been no direct intention or design whatever against either the state or the person of the king. This construction is said to depend upon the *generality* of the design. If the intention be to pull down *particular* inclosures or meeting-houses only, the offence is a mere riot, and in quality a simple misdemeanor. Although the generality of the design may be a reason for awarding a higher punishment in the former than in the latter case, there appears to be no foundation in reason or principle for construing an offence, which but for such generality would be a misdemeanor only, to amount to the crime of treason in levying war against the king. The Criminal Law Commissioners (4th, 5th, and 6th Reports) have recommended that this offence should no longer be considered to fall within the statute of treasons. They propose that the only assemblings or risings of the people which should amount to a levying of war against the king should be such as are against the person of the king, or against any army or force appointed by him in opposition to his authority, or with intent to do him bodily harm, or impose any restraint upon his person, or to depose him, or to dispossess or deprive him of any portion of his dominions or regal authority, or with intent by force or constraint to compel him to change his measures or counsels, or to put any force or constraint upon or to intimidate or overawe both houses or either house of parliament; and that no assembling or rising of the people should by reason of any illegality or generality of purpose be deemed to be a levying of war against the king, unless it be with one or other of the several intentions before mentioned. Such riotous and tumultuous meetings as have no such intention in view they recommend should be denominated felonies or misdemeanors merely, according to the circumstances by which they are attended.

Again, the term "Præmunire" was originally applied to offences which consisted in the introduction of any foreign jurisdiction, more especially the authority of the See of Rome, into the kingdom; but has subsequently, to use the language of Mr. Serjeant Hawkins (*Pleas of the Crown*, b. 1, c. 19), "been applied to other heinous crimes, for the most part having relation to the offences originally coming under the notion of præmunire, but in some instances none at all." The Habeas Corpus Act (31 Car. II. c. 12) contains an instance of the latter mode of application. By the 12th section of that act it is made a Præmunire to send any inhabitant of England, Wales, or the town of Berwick-upon-Tweed, a prisoner beyond the seas in defiance of its provisions to the contrary.

The term "Præmunire" was adopted from the first word of the original writ on which the subsequent proceedings were founded: "*Præmunire* (for *præmoneri*) *facias* A. B. quod sit coram nobis," &c. [PRÆMUNIRE.] The Criminal Law Commissioners propose to abolish præmunires as a class of crimes. (Seventh Report.)

The crime of felony had its origin in very remote times, and was founded upon feudal principles. Its incidents were not formerly, as they are now, of a merely

* Petit Treason was abolished by the 9 Geo. IV. c. 31, s. 2, and the offences constituting it declared to be murder only.

arbitrary nature, peremptorily annexed to certain criminal acts without reference to rule or principle. The crime originally consisted in a violation of the feudal contract by the misconduct of the lord or of the tenant; and where committed by the tenant, occasioned as a consequence the forfeiture of his feud to the lord. (4 Black. *Comm.*, p. 96; 4th and 7th *Repts. of Crim. Law Commrs.*)

Those crimes, therefore, which induced such forfeiture, and, by a small deflection from the original sense, those which induced the forfeiture of goods also, were denominated felonies; and afterwards by long use the term *felony* came to signify the actual crime itself, and not the penal consequence. "So that, upon the whole," to use the words of Mr. Justice Blackstone (4 *Comm.*, p. 95), "the only adequate definition of felony seems to be that which is before laid down, viz. an offence which occasions a total forfeiture of either lands or goods, or both, at the common law; and to which capital or other punishment may be superadded according to the degree of guilt." Where the punishment is less than capital, the offender loses his goods only; where capital, his lands as well as his goods. The crimes which occasioned such forfeiture were originally, with one or two exceptions, capital; but at the present day there are offences for which no greater punishment can be inflicted than imprisonment for a term not exceeding three years, which are felonies, and consequently occasion the forfeiture of all the offender's goods and chattels; whilst other crimes, for which the punishment may be as high as transportation for fourteen years, and in one instance *must be* for life, are misdemeanors only, and work no forfeiture. It is apparent from this that the present law is very defective, and that the amount of punishment is no longer the test of distinction between a felony and misdemeanor. It is proposed by the Criminal Law Commissioners (Seventh Rep. p. 16) to remedy this by making the liability to transportation the test of distinction, *i. e.* that all offences liable to a less punishment than transportation should be misdemeanors only.

The term "Misdemeanor" is used in the English system of Criminal Law to denote such indictable offences as are of a lower degree than felony.

We shall now point out the peculiarities of punishment which distinguish one class of crimes from another at the present day. In order to this, the penal consequences incident to the whole body of offences constituting each class will be first stated, and then in what respects those consequences differ from each other. The classes will be taken in the same order as above.

1st. *Treasons.*—Treasons, with one exception mentioned below, are capital; but whether capital or not, the offender, *upon conviction*, forfeits to the crown the personal estate of every description, whether in action or possession, or settled by way of trust, which the offender has otherwise than as an executor (Cro. Car. 566), or a trustee, or a mortgagee (4 & 5 Wm. IV. c. 23, s. 3) at the time of conviction; and in the case of capital treasons, *upon attainder by judgment of death or outlawry*, the blood of the offender is corrupted, but not so as to obstruct descents to such offender's posterity, when they are obliged to derive a title through such offender to a remoter ancestor (3 & 4 Wm. IV. c. 106, s. 10), and all the freehold lands and tenements of inheritance in fee-simple or fee-tail, and all other hereditaments (except copyholds), whether in possession, reversion, or remainder; and all the rights of entry on freehold lands and tenements which the offender has (otherwise than as a trustee or mortgagee, 4 & 5 Wm. IV. c. 23, s. 3) at the time of the offence committed or at any time afterwards, and also the profits of all freehold lands and tenements which the offender has in his or her own right for life, so long as such interest shall subsist, and, if the offender be a male, his wife's dower, are forfeited to the crown (4 Black. *Comm.*, 381; 26 Hen. VIII. c. 13, s. 5; 33 Hen. VIII. c. 20, s. 2; and 5 & 6 Edw. VI. c. 11, ss. 9 and 13); and all the copyhold estates belonging to the offender at the time of the offence committed are forfeited to the lord of the manor (Com. Dig. Copyhold (M) I.). The above penal consequences are general to all capital treasons, unless, as is sometimes the case, the act which creates the

particular treason expressly exempts from some of them. The before-mentioned non-capital treason renders the party guilty of it liable to those only of the above consequences which accrue upon conviction, since the others follow only upon the party's being attainted, that is, sentenced to death or outlawed, which latter, in the case of capital treasons and felonies, is of the same effect as being sentenced to death. The existence of this non-capital treason would appear to be the result of inadvertence. By the Forgery Consolidation Act (11 Geo. IV. & 1 Wm. IV. c. 66), it was declared to be treason and punishable with death to forge the great and other royal seals and the sign manual. By the 2 & 3 Wm. IV. c. 123, the punishment of death was repealed for forgery in all but the two cases of wills and powers of attorney to transfer stock (it has been since taken away in these cases also by the 7 Wm. IV. & 1 Vict. c. 84); but the *quality* of the offences enumerated in the Forgery Consolidation Act was left without alteration; so that to forge the royal seals, &c. would appear to be still treason, though no longer a capital offence.

The judgment of death in the case of treason is that the offender, if a male, be drawn on a hurdle to the place of execution, and be there hanged by the neck until dead; and that afterwards the head be severed from the body of such offender, and the body be divided into four quarters, to be disposed of as her majesty shall think fit (54 Geo. III. c. 146); and, if a female, that the offender be drawn to the place of execution and be there hanged by the neck until dead (30 Geo. III. c. 48, s. 1). The queen, however, may, by warrant under her sign manual, countersigned by a principal secretary of state, direct, where the offender is a male, that he shall not be drawn, but taken in such manner as in the warrant shall be expressed to the place of execution, and that he shall not be hanged, but be beheaded, whilst alive, instead (54 Geo. III. c. 146, s. 2).

2. *Præmunires.*—The penalties of præmunire, as shortly summed up by Sir Edward Coke (1 Inst. 130 a.), are, "that from the conviction the defendant shall be out of the king's protection, and his lands and tenements" (*i. e.* in fee-simple or for life, but not in tail, beyond his life interest therein), "goods and chattels, forfeited to the king; and that his body shall remain in prison at the king's pleasure, or, as other authorities have it, during life." These penalties were first imposed by the stat. 16 Rich. II. c. 5 (commonly called the Statute of Præmunire); and it is by reference to that statute that all subsequent præmunires have been made punishable. It was formerly supposed that a person convicted of præmunire, being put out of the king's protection, might be killed with impunity as being the king's enemy; but by the 5 Eliz. c. 1, ss. 21 and 22, it was enacted that it should not be lawful to kill any person attainted in a præmunire, saving such pains of death or other hurt or punishment as theretofore might, without danger of law, be done upon persons sending or bringing into the realm, &c. any process, &c. from the See of Rome. Præmunires, although they occasion a forfeiture of the offender's lands and goods, are not felonies. To constitute a felony the offence must have worked a forfeiture at the common law; but in the case of præmunire the forfeiture is made a part of the punishment by statute merely, which is not sufficient. (4 Black. *Comm.*, pp. 94 and 118.)

3. *Felonies.*—All felonies, as stated above, were originally, with one or two exceptions, punishable with death; but the offender, unless the felony was excluded from the benefit of clergy, was entitled, for a first offence, to be discharged from the capital punishment upon praying that benefit. [BENEFIT OF CLERGY.] But now, since the passing of the 7 & 8 Geo. IV. c. 28, no felony is punishable with death unless it was excluded from the benefit of clergy before or on the 14th Nov., 1826, or has been or shall be made punishable with death by some statute passed since that day. Where not capital, felonies are punishable either in the manner prescribed by the statute or statutes specially relating to such felonies, or, where no punishment has been or may hereafter be specially provided, with transportation for seven years, or imprisonment for any term not exceeding two

years, with the addition. if the court shall think fit, of whipping, where the offender is a male, hard labour and solitary confinement, or any of them. (7 & 8 Geo. IV. c. 28, ss. 7 and 8.) Such confinement must not however be for a longer period than one month at a time, or three months in a year. (7 Will. IV. & 1 Vict. c. 90, s. 5.) In the case of *all* felonies, whether capital or not, the offender immediately *on conviction* forfeits to the crown all the personal estate of every description, whether in action or possession, or settled by way of trust, which he has otherwise than as an executor (Cro. Car. 566), or a trustee or mortgagee (4 & 5 Will. IV. c. 23, s. 3), at the time of conviction (Bac. *Abrid.*, 'Forfeiture' (B); Co.-Litt. 391 a); and in the case of all capital felonies, *upon attainder by judgment of death or outlawry*, forfeits to the crown the profits of all estates of freehold (4 Black. *Comm.*, 385), and of things not lying in tenure (Bac. *Abrid.* 'Forfeiture' (A)), and to the lord of the manor the profits of all estates of copyhold (Hawk. *P.C.* b. 2, c. 49, s. 7; Lord Cornwall's case, 2 Vent. 38-9), which the offender has, otherwise than as a trustee or mortgagee (4 & 5 Will. IV. c. 23, s. 3), at the time of the offence committed, during his life; and his blood is corrupted (but not so as to obstruct descents to the posterity of such offender where they are obliged to derive a title through him to a remoter ancestor (3 & 4 Will. IV. c. 106, s. 10), and after his death his copyholds which he holds in fee-simple are forfeited to the lord of the manor. (Scriven *On Copyholds*, 523, note (d).) And also in the case of murder, all his freehold lands and tenements in fee-simple escheat (subject to what is called the crown's year, day and waste) to the lord of the fee. (54 Geo. III. c. 145; Co.-Litt. 391 a; 4 Black. *Comm.* 385.)

The judgment of death in the case of all capital felonies, except murder, is that the offender be hanged by the neck until dead (2 Hale's *P.C.* 411); and, in the case of murder, it is the same, with the addition that the offender's body shall be buried within the precincts of the prison in which he shall have been confined after conviction. (2 & 3 Will. IV. c. 75, s. 16; 4 & 5 Will. IV. c. 26.) The court however is empowered, if it shall think that the offender is a fit subject to be recommended to the royal mercy, to abstain from pronouncing judgment of death upon him, and to order such judgment to be entered of record instead; and the judgment so recorded has the same effect as if pronounced and the party were reprieved. (4 Geo. IV. c. 48, ss. 1 and 2; 6 & 7 Will. IV. c. 30, s. 2.)*

4. *Misdemeanors.*—The punishment in the case of misdemeanors, where none is specially provided by statute, is generally fine and imprisonment.

From what has been stated, it will be seen that the circumstance, so far as punishment is concerned, which distinguishes misdemeanors from all the other classes of offences, is the absence of forfeiture as a necessary consequence of conviction. The distinction between præmunires and felonies (which term, it should be remarked, in its largest sense, includes treasons, on account of the forfeiture which that class of crimes occasions) is, that the forfeiture which ensues upon a conviction of the former is, as before observed, in pursuance of statutable provisions; whereas in the latter case it is a common law consequence of the offence, and follows as a matter of course whenever a crime is declared to be a felony. There appears to be no distinction as regards punishment, independently of special statutable enactment, between non-capital felonies (the term is used here in its ordinary restricted sense) and the non-capital treason above described; but the difference between felonies and treasons when punishable with death is very considerable. In the case of felonies the offender upon attainder *forfeits* to the crown the profits only of such freehold and copyhold lands as he had at the time of committing the offence, during his life, and after his death, his

* See R. v. Hogg, 2 M. & Ro. 381, where it was held that since the passing of the 6 & 7 Will. IV. c. 30, death may be recorded in the case of murder as well as other capital felonies, notwithstanding the exception contained in the 4 Geo. IV c. 48.

copyholds in fee-simple are forfeited to the lord of the manor; and even where attainted of murder, though his freehold estates in fee-simple fail after his death, it is not as a consequence of the law of forfeiture, but because they escheat for want of heirs capable of succeeding to them, owing to his blood being corrupted by the attainder; and it is on account of such estates escheating and not being forfeited that they go to the lord of the fee (that is, subject to the crown's year, day and waste), and not to the crown, unless there appears to be no intermediate lord between the offender and the crown, in which event the crown takes as ultimate lord of the fee. In the case of treason, however, the offender upon attainder, instead of forfeiting to the crown the profits merely of such freehold lands as he had at the time of committing the offence, during his life, forfeits all freehold estates of inheritance, as well those in fee-tail as those in fee-simple, and not only such as he had at the time of the commission of the offence, but those also which he may acquire at any time afterwards; and instead of forfeiting to the crown the profits of his copyholds during his life, and to the lord of the manor his copyholds in fee-simple only, he forfeits at once to the lord of the manor *all* the copyholds belonging to him at the time the offence was committed. Where the offender is a male, his wife's dower is also forfeited to the crown, which is not the case in felony. It is to be observed that the crown is now empowered (see 59 Geo. III. c. 94) to restore the whole or any part of any lands or hereditaments to which it becomes entitled by escheat or forfeiture to the family of the offender, a provision which has greatly mitigated the harshness of the law of forfeiture. The Criminal Law Commissioners however recommend the entire abolition of the confiscation of property as a necessary incident to convictions for treason or felony. (*Seventh Report on Criminal Law.*) The difference between the judgment of death for treason and that for felony requires no comment.

Besides the above peculiarities of punishment, these different classes of offences are distinguished by particular forms of procedure; but it will be more convenient to refer to these when describing our general system of criminal procedure.

Having pointed out the leading characteristics of the various classes into which indictable crimes are divisible by the law of England, it is now proposed to state shortly what are the different offences comprised under each of those classes. In this view the offences belonging to each class are arranged under their several punishments. The classes are taken in the same order as before. It will be proper, however, in the first instance, to show what persons are capable of committing crimes, to notice one or two provisions of general application, for the purpose of preventing repetition, and to make a few explanatory observations.

According to the law of England, all persons above the age of seven years, except such as by reason of unripeness, weakness, unsoundness, disease, or delusion of mind, are incapable of discerning, at the time they do an act, that the act is contrary either to the law of God or the law of the land, are criminally responsible for such act; but temporary incapacity wilfully incurred by intoxication or other means is no excuse. An infant of the age of seven and under fourteen years, however, is to be presumed to be incapable of committing a crime until the contrary be proved. Duress, also, inducing a well-grounded fear of death or grievous bodily harm, will excuse a person acting under such duress in all cases except treason and murder; and a married woman committing any offence, except those last-mentioned, if her husband be present at the time, shall be presumed to have acted under his coercion, and be entitled to an acquittal, unless it appear that she did not so act. A married woman also shall not be liable to conviction for receiving her husband or any other person in his presence and by his authority.

The following provisions are of general application. By the stat. 7 Will. IV. & 1 Vict. c. 90, s. 5, it is enacted that no court shall direct any offender to be kept in solitary confinement for any longer period than one month at a time or than three months in the space of one year. Whenever, therefore, in the following

statement solitary confinement is mentioned as part of the punishment for any offence, the periods during which it may be inflicted are to be understood as regulated by the above provision.

By the statute 7 Will. IV. & 1 Vict. c. 85, s. 11, power is given to the jury on the trial of any person for any felony whatever, where the crime charged shall include an assault against the person, to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding; and thereupon the court may imprison the person so found guilty of an assault for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

By the stat. 1 Geo. IV. c. 57, s. 3, it is provided that where the punishment of whipping on *female* offenders formed, before the passing of that act, the whole or part of the sentence to be pronounced, the court may pass sentence of confinement to hard labour for any time not exceeding six months nor less than one month, or of solitary confinement, in lieu of the sentence of being whipped. In all cases, therefore, where whipping is mentioned to be part of the punishment, without its being restricted to males, the above provision operates.

By the 3 & 4 Vict. c. 111, made perpetual by 5 & 6 Vict. c. 85, members of joint-stock or other banking companies, consisting of more than six persons, committing offences against or with intent to injure or defraud such co-partnerships, are made liable to the same punishments as if they had not been or were not members of such co-partnerships.

In the following statement the general description only is given of any particular offence. It is to be observed, however, that where a crime is defined by statute, the enactment in most cases comprises, in fact, many other offences distinct from the general one, though in nature connected with it. For the details of such enactments, reference must be made to the statutes cited at the end of each offence. With respect to these statutes, those which define the crime, as well as those which declare the punishment, are referred to wherever the statutes are distinct, and these are arranged as regards any particular crime in the order of date; and generally, but not universally, where statutes of both descriptions are referred to, those by which the crime is defined stand the first in order. The following statement contains no offence contained in any merely temporary act, or in any local or private act, of a date subsequent to the period since which such acts have been printed separately from the public general acts.

I. Treasons.—(*Capital.*)

The following treasons are punishable with death,* viz.:—

1. Compassing the death of the king (which term includes a queen regnant) or of his queen, or their eldest son and heir; violating the king's companion, (*i. e.* his wife) during the coverture, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; levying war against the king in his realm, or being adherent to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere, and being thereof attainted of open deed; or slaying the chancellor, treasurer, or the king's justices of the one bench or the other; justices in eyre or justices of assize, or any other justices assigned to hear and determine, being in their places doing their offices.† (25 Edw. III. st. 5, c. 2.)

2. Endeavouring to prevent the person next in succession to the crown, according to the Acts of Settlement, from succeeding thereto. (1 Anne, st. 2, c. 17, s. 3.)

3. Affirming, by writing or printing, that any other person has a right to the crown otherwise than according to the Acts of Settlement and the Acts for the Union of England and Scotland; or that

* To conceal or keep secret any treason committed or intended to be committed is termed misprision of treason, and is punishable with loss of the profits of lands during life, forfeiture of goods, and imprisonment for life. (See 1 & 2 Phil. and Mary, c. 10, s. 8.)

† By the 11 Hen. VII. c. 1, it is enacted that no person who attends upon *the king for the time being*, in his person, and does him true and faithful service of allegiance, or is in other places by his commandment, in his wars, in this land or without, shall for such deed and true allegiance be convicted or attainted of treason.

the crown, with the authority of parliament, is unable to limit the descent of the crown. (6 Anne, c. 7, s. 1.)

4. Compassing or intending the death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the king; or to deprive or depose him from the crown; or to levy war against him, within the realm, in order to compel him to change his measures or counsels, or in order to overawe the parliament; or to move any foreigner to invade any of the British dominions; such compassing or intention being expressed by publishing some printing or writing, or by some overt act or deed. (36 Geo. III. c. 7, s. 1, made perpetual by 57 Geo. III. c. 6.)

5. Being married to, or being concerned in procuring the marriage of any issue of her present majesty whilst such issue are under eighteen (in case the crown shall have descended to any such before that age), without the consent in writing of the regent and the assent of both Houses of Parliament. (3 & 4 Vict. c. 52, s. 4.)

6. Knowing any person to have committed any of the before-mentioned capital treasons, receiving, relieving, comforting, or assisting him, or aiding his escape from custody.

7. Bringing into the realm papal bulls or other writings or instruments from the See of Rome; or publishing or putting in use any such bulls, writings, or instruments.* (13 Eliz. c. 2, ss. 2 and 3.)

Besides the last-mentioned offence, there also existed till quite recently several other capital treasons relating to the See of Rome; but these were repealed by the 7 & 8 Vict. c. 102.

TREASON—(*Non-Capital.*)

The following treason (the one already alluded to) is punishable with transportation for life or not less than seven years, or with imprisonment for any term not exceeding four nor less than two years, with or without hard labour or solitary confinement, or with both, viz.:—

1. Forgery of the great seal, her majesty's privy seal, any privy signet of her majesty, the royal sign manual, the seals appointed to be used in Scotland, and the great and privy seals of Ireland. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 2; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3.)

II. PRÆMUNIRES.

The following are the offences coming under this denomination still in force:—

1. Derogating from the queen's courts (27 Edw. III. stat. 1, c. 1, s. 1).

2. Deans and chapters omitting to elect a bishop; and archbishops or bishops to consecrate the person so elected, after receiving the queen's congé d'élire. (25 Hen. VIII. c. 20, s. 7; repealed by 1 & 2 Philip and Mary, c. 8, and revived by 1 Eliz. c. 7.)

3. Molesting the possessors of abbey lands contrary to the provisions of 1 & 2 Philip and Mary, c. 8. (1 & 2 Phil. and Mary, c. 8, s. 40.)

4. Obtaining any stay of proceedings, other than by arrest of judgment or writ of error, in suits for monopolies. (21 Jac. I. c. 3, s. 4.)

5. Procuring any stay of proceedings, other than by the authority of the court, in actions brought against persons for making provision or purveyance for the crown. (12 Car. II. c. 24, s. 14.)

6. Asserting maliciously and advisedly, by speaking or writing, that both or either House of Parliament has a legislative authority without the crown. (13 Car. II. c. 1, s. 3.)

7. Sending any subject of the realm a prisoner beyond the seas in defiance of the Habeas Corpus Act. (31 Car. II. c. 2, s. 12.)

8. Asserting, maliciously and directly, by preaching, teaching, or advised speaking, that any person, other than according to the Acts of Settlement and Union, has any right to the throne of these kingdoms, or that the queen and parliament cannot make laws to limit the descent of the crown. (6 Anne, c. 7, s. 2.)

9. Knowingly and wilfully solemnizing,

* The repeal of this offence is recommended by the Commissioners for revising and consolidating the Criminal Law. See their Report on Penalties and Disabilities in regard to Religious Opinions, dated the 30th May, 1845.

assisting, or being present at any marriage forbidden by the Royal Marriage Act. (12 Geo. III. c. 11, s. 3.)

10. Aiding, comforting, or maintaining persons who bring into the realm papal bulls or other writings or instruments from the See of Rome to the intent to uphold the jurisdiction or authority of the pope.* (13 Eliz. c. 2, s. 4.)

III. Felonies.—(*Capital.*)

The following felonies are punishable with *death*, viz.:—

1. Destroying ships of war or her majesty's arsenals, dock-yards, naval, military or victualling stores, or other ammunition of war, &c. (12 Geo. III. c. 24, s. 1.)

2. Murder. (9 Geo. IV. c. 31, s. 3.)

3. Unnatural offences. (9 Geo. IV. c. 31, s. 15.)

4. Attempts to murder by administering poison, or by wounding, or by any other means where bodily injury dangerous to life is caused. (7 Wm. IV. & 1 Vict. c. 85, s. 2.)

5. Burglary, aggravated by striking an inmate. (7 Wm. IV. & 1 Vict. c. 86, s. 2.)

6. Robbery, aggravated by wounding the person robbed. (7 Wm. IV. & 1 Vict. c. 87, s. 2.)

7. Piracy, aggravated by endangering the life of any person on board of the vessel in respect of which the piracy is committed. (7 Wm. IV. & 1 Vict c. 88, s. 4.)

8. Setting fire to a dwelling-house, any person being therein. (7 Wm. IV. & 1 Vict. c. 89, s. 2.)

9. Destroying vessels with intent to murder, or whereby human life is endangered. (7 Wm. IV. & 1 Vict. c. 89, s. 4.)

10. Exhibiting false lights, &c. with intent to bring ships into danger, or unlawfully doing anything tending to the destruction of ships in distress. (7 Wm. IV. & 1 Vict. c. 89, s. 5.)

Besides the above offences, that of wilfully and without lawful excuse having or being possessed of any forged stamp used in pursuance of any act relating to any duties on gold or silver plate made or wrought in Great Britain, for the purpose of marking or stamping such plate, appears to be still punishable with death.

That offence is contained in 55 Geo. III. c. 185, s. 7, by virtue of which enactment it was formerly also a capital crime to forge or utter the stamps provided for marking any such plate, or to fraudulently remove such stamps from one piece of such plate to another, or privately and secretly to use such stamps with intent to defraud the king. The punishment of death for these last-mentioned offences was repealed, however, by 11 Geo. IV. & 1 Wm. IV. c. 66, s. 1 (as to the forging and uttering), and by 4 & 5 Vict. c. 56, s. 1 (as to the removing and fraudulently using); but by some inadvertence (for it is clear that it can never have been intended) the offence of being possessed, without lawful excuse, of forged stamps for marking gold or silver plate (the least criminal of all the acts specified in 55 Geo. III. c. 185, s. 7) is still left capital.

(*Non-Capital.*)

Non-capital felonies are punishable as follows, viz., with

I. *Transportation for life*, and previously thereto imprisonment, with or without hard labour, for any term not exceeding four years.

1. Offenders transported from Great Britain being found at large, without some lawful excuse, before the expiration of their term of transportation. (5 Geo. IV. c. 84, s. 22; 4 & 5 Wm. IV. c. 67.)

II. *Transportation for life.*

1. Rape. (9 Geo. IV. c. 31, s. 16; 4 & 5 Vict. c. 56, s. 3.)

2. Carnally knowing and abusing girls under ten years of age. (9 Geo. IV. c. 31, s. 17; 4 & 5 Vict. c. 56, s. 3.)

3. Forgery of the name or handwriting of the Receiver-General of Customs, or of the Comptroller-General of Customs, &c., to any draft &c. on the Bank. (8 & 9 Vict. c. 85, s. 26.)

III. *Transportation for life* or not less than fifteen years, or imprisonment for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Piracy. (28 Hen. VIII. c. 15; 11 &

* The repeal of this offence is recommended by the Commissioners for Revising and Consolidating the Criminal Law.

12 Wm. III. c. 7, ss. 8, 9, and 10; 4 Geo. I. c. 11, s. 7; 6 Geo. I. c. 19; 8 Geo. I. c. 24, ss. 1 and 3; 2 Geo. II. c. 28, s. 7; 18 Geo. II. c. 30; 7 Wm. IV. & 1 Vict. c. 88, ss. 3 and 5.)

2. Offences against the Riot Act.* (1 Geo. I. stat. 2, c. 5, ss. 1 and 5; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.)

3. Rescuing a murderer out of prison, or whilst going to or during execution. (25 Geo. II. c. 37, s. 9; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.)

4. Seducing soldiers or sailors from their allegiance, or inciting them to mutiny. (37 Geo. III. c. 70, s. 1; 57 Geo. III. c. 7; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.)

5. Administering oaths binding any person to commit treason or any capital felony. (52 Geo. III. c. 104, s. 1; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.)

6. Any subject of her majesty, or any person residing in any of the queen's dominions or in any place under the government of the East India Company, or upon the high seas, or within the Admiralty jurisdiction, carrying away, &c. persons to make slaves of them. (5 Geo. IV. c. 113, s. 9; 3 & 4 Wm. IV. c. 73; 7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2.†)

7. Assembling armed, to the number of three or more, for the purposes of smuggling. (7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2; 8 & 9 Vict. c. 87, s. 63.)

8. Shooting at vessels belonging to the navy or in the revenue service, within 100 leagues of the coast; or shooting at revenue officers and others duly employed for the prevention of smuggling. (7 Wm. IV. & 1 Vict. c. 91, ss. 1 and 2; 8 & 9 Vict. c. 87, s. 64.)

9. Attempts to murder, by attempting to administer poison, or by shooting at or attempting to drown, suffocate, or strangle any person, although no bodily injury be effected. (7 Wm. IV. & 1 Vict. c. 85, ss. 3 and 8.)

10. Shooting at or attempting to discharge any kind of loaded arms at or wounding any person, with intent to do grievous bodily harm to such person, or to prevent lawful apprehension or detainer. (7 Wm. IV. & 1 Vict. c. 85, ss. 4 and 8.)

11. Sending explosive substances, &c. to any person, or throwing any corrosive fluid or other destructive matter upon any person, with intent to do grievous bodily harm, and whereby grievous bodily harm is done to any person. (7 Wm. IV. & 1 Vict. c. 85, ss. 5 and 8.)

12. Attempting to procure the miscarriage of women. (7 Wm. IV. & 1 Vict. c. 85, ss. 6 and 8.)

13. Robbery, aggravated by the offender being armed, by numbers, or by the use of personal violence to the person robbed. (7 Wm. IV. & 1 Vict. c. 87, ss. 3 & 10.)

14. Extorting property by threatening to accuse of unnatural crimes. (7 Wm. IV. & 1 Vict. c. 87, ss. 4 and 10.)

15. Setting fire to places of worship or houses, or to buildings or erections used for the purposes of trade, with intent to injure or defraud any person. (7 Wm. IV. & 1 Vict. c. 89, ss. 3 and 12.)

16. Setting fire to or otherwise destroying vessels, with intent to prejudice any person interested therein or in the goods on board the same, as an owner, part owner, or underwriter. (7 Wm. IV. & 1 Vict. c. 89, ss. 6 and 12.)

17. Forcibly preventing a person endeavouring to save his life from a vessel in distress or wrecked. (7 Wm. IV. & 1 Vict. c. 89, ss. 7 and 12.)

18. Setting fire to coal-mines. (7 Wm. IV. & 1 Vict. c. 89. ss. 9 and 12.)

19. Setting fire to stacks of corn, grain, coal or wood, &c., or to any steer of wood. (7 Wm. IV. & 1 Vict. c. 89, ss. 10 and 12.)

IV. *Transportation for life* or not less than fifteen years, or imprisonment for any term not exceeding three years.

1. Setting fire to farm buildings or to buildings or erections used in farming land; or, for the purpose of setting fire to such farm-buildings, setting fire to farm produce or implements being therein, with intent in any such case to injure or defraud any person.* (7 & 8 Vict. c. 62, ss. 1 and 2.)

* See also 17 Rich. II. c. 8; 13 Hen. IV. c. 7; 2 Hen. V. stat. 1, c. 8. Also 33 Geo. III. c. 67, s. 1; 41 Geo. III. (U. K.) c. 19, s. 4, as to riots by keelsmen.

† See also 3 & 4 Vict. c. 111.

* Offenders, if males under eighteen years of age, may also be whipped in addition to any other punishment. (See s. 3.)

V. *Transportation for life* or not less than ten years, or imprisonment for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Burglary. (7 Wm. IV. & 1 Vict. c. 86, ss. 3 and 7.)

VI. *Transportation for life* or not less than seven years.

1. Personating soldiers or other persons entitled to prize-money, &c. on account of military services, or their representatives; or,

2. Forging the name or handwriting of any person so entitled, or of any officer or servant of Chelsea Hospital, &c., or any writing concerning the payment of any such prize-money, &c. (2 Wm. IV. c. 53, s. 49.)

VII. *Transportation for life* or for any term of years.

1. Taking oath (not being compelled thereto) binding the person taking the same to commit treason or any capital felony. (52 Geo. III. c. 104, s. 1.)

2. Personating soldiers or other persons entitled to pensions, &c. on account of military services, or their representatives; or,

3. Forging the name or handwriting of any person so entitled, or of any officer or servant of Chelsea Hospital, &c. or any writing concerning the payment of any such pensions, &c. (7 Geo. IV. c. 16, s. 38.)

VIII. *Transportation for life* or for fourteen or seven years.

1. Aiding the escape of prisoners of war from prison or from the queen's dominions, if at large upon parole. (52 Geo. III. c. 156, s. 1.)

2. Subjects of her majesty aiding, upon the high seas, the escape of prisoners of war after they have quitted the coast. (52 Geo. III. c. 156, s. 3.)

IX. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding seven years, with or without hard labour.

1. Stealing or embezzling her majesty's ammunition, naval or military stores. (4 Geo. IV. c. 53; 7 & 8 Geo. IV. c. 27.)

2. Sending letters threatening to kill any person, or to burn his house, stacks, &c.; or rescuing a person in custody for any such offence. (4 Geo. IV. c. 54, s. 3; 7 & 8 Geo. IV. c. 27.)

3. Bankrupt not surrendering, or not discovering all his estate, or embezzling or concealing any part thereof to the amount of 10*l.* or upwards, &c. (5 & 6 Vict. c. 122, ss. 32 and 93.)

X. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four nor less than two years, with or without hard labour or solitary confinement, or with both.

1. Forgery of the seal or bonds of the South Sea Company (6 Geo. I. c. 4, s. 56; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of receipts or warrants of the South Sea Company (6 Geo. I. c. 11, s. 50; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of seals, policies, &c. of the London and Royal Exchange Assurance Companies (6 Geo. I. c. 18, s. 13; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certain Annuity Orders made forth in pursuance of 6 Geo. I. cc. 11 and 17, 7 Geo. I. st. 1, c. 30, 8 Geo. I. c. 20, or 9 Geo. I. c. 12, or of any authority to transfer the same (9 Geo. I. c. 12, s. 4; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the name or handwriting of the Accountant-General, Registrar, or Clerk of the Report Office (of the Court of Chancery), or of any cashier of the Bank, to any instrument relating to the suitors' money or effects (12 Geo. I. c. 32, s. 9; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1, 26, and 31); of Mediterranean Passes (4 Geo. II. c. 18, s. 1; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the common seal, bonds, &c. of the English Linen Company (4 Geo. III. c. 37, s. 15, 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certificates, &c. of the Commissioners for the Reduction of the National Debt (32 Geo. III. c. 55, s. 9; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of the seal, policies, &c. of the Globe Insurance Company (39 Geo. III. c. 83, s. 22; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the name or handwriting of the Treasurer of the Ord-

nance, &c., to any draft, &c. on the Bank (46 Geo. III. c. 45, s. 9; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of the name or handwriting of the Receiver-General of Stamps and Taxes, or of his clerk, or of the Commissioners of Stamps and Taxes, to any draft, &c. on the Bank (46 Geo. III. c. 76, s. 9; 11 Geo. IV. & 1 Wm. IV. c, 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 4 & 5 Wm. IV. c. 60; 5 & 6 Wm. IV. c. 20; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of contracts, certificates, &c. relating to the redemption of the land-tax (52 Geo. III. c. 143, s. 6; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of stamps on vellum, parchment, or paper * (52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 184, s. 7; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of debentures or certificates for the payment or return of money required by any act relating to the Customs or Excise (52 Geo. III. c. 143, s. 10;† 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of stamps on gold or silver plate (55 Geo. III. c. 185, s. 7; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certificates of Commissioners for the issue of Exchequer-bills for carrying on public works and fisheries in the United Kingdom (57 Geo. III. c. 34, s. 63; 3 Geo. IV. c. 86, s. 54;‡ 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the name or handwriting of the Accountant-General, Barons, or Clerk of the Reports (of the Court of Exchequer), or of any cashier of the Bank, to any instrument relating to the suitors' money or effects (1 Geo. IV. c. 35, s. 27; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certificates or appointments relating to public salaries, pensions, and allowances (3 Geo. IV. c. 113, s. 23; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of orders for payments in connection with public salaries, pensions, and allowances (3 Geo. IV. c. 113, s. 23; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of certificates of certain stock, transferable at the Banks of England and Ireland respectively (5 Geo. IV. c. 53, s. 22; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of the name or handwriting of the receiver-general of Excise, or Excise comptroller of cash, &c. to any draft, &c. upon the Bank (7 & 8 Geo. IV. c. 53, s. 56; 11 Geo. IV. & 1 Wm. IV. c. 66, s. 4; 2 & 3 Wm. IV. c. 123; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of stamps upon or relating to cards or dice (9 Geo. IV. c. 18, s. 35; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26); of certificates, &c. as to annuities grantable by the commissioners for the reduction of the national debt, or of instruments made by them relating thereto (10 Geo. IV. c. 24, s. 41; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26; 2 & 3 Wm. IV. c. 59, s. 19; 7 Wm. IV. & 1 Vict. c. 84, ss. 1 and 3); of certificates and other documents in order to obtain pay or prize-money, due in respect of services performed by any person in the navy (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 83 and 88; 2 Wm. IV. c. 40, s. 35); of Exchequer-bills,* Exchequer debentures, East-

* As to the forgery of stamps on newspapers, the 6 & 7 Wm. IV. c. 76, s. 1, appears to make that offence punishable under 55 Geo. III. c. 184, s. 7, *i. e.* in the same manner as the forgery of stamps on vellum, parchment, or paper. See Lonsdale's 'Statute Criminal Law,' p. 81, note (c.); the language of the Act, however, is very obscure.

† The 52 Geo. III. c. 143, s. 10, appears to be repealed, so far as relates to the Customs, by 6 Geo. IV. c. 105, s. 297; at all events is so by 3 & 4 Wm. IV. c. 50, s. 3. Also, as to certificates relating to the duties of Excise, see 41 Geo. III. [U. K.] c. 91, s. 5.

‡ See also 57 Geo. III. c. 124; 1 Geo. IV. cc. 60 and 81; 1 & 2 Geo. IV. c. 111; 4 Geo. IV. c. 63; 5 Geo. IV. cc. 36 and 77; 6 Geo. IV. c. 35; 7 Geo. IV. c. 30; 7 & 8 Geo. IV. cc. 12 and 47; 1 & 2 Wm IV. c. 24; 4 & 5 Wm. IV. c. 72; 7 Wm. IV. & 1 Vict. c. 51; 1 & 2 Vict c. 88; 3 & 4 Vict. c. 10; and 5 & 6 Vict. c. 9, s. 14.

* It is doubtful whether the forgery of Exchequer-bills, made out in pursuance of the annual Appropriation Acts, be not still punishable with death, notwithstanding the repeal of that punishment in case of the forgery of other Exchequer-bills. In those acts a clause continues to be inserted, notwithstanding the repeal by 11 Geo. IV. & 1 Wm. IV. c. 66, so far as relates to any forgery, of the 48 Geo. III. c. 1 (which made the forgery of Exchequer-bills directed to be issued under that Act, a capital offence), that all and every the clauses, provisions, powers, privileges, advantages, penalties, forfeitures, and disabilities,

India bonds, bank-notes, bills of exchange, promissory notes and warrants or orders for the payment of money (11 Geo. IV. & 1 Wm. IV. c. 66, s. 3; 2 & 3 Wm. IV. c. 123, s. 1; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of transfers of any public stock transferable at the Bank or South Sea House, or of the capital stock of any body corporate, &c. established by charter or act of parliament (11 Geo. IV. & 1 Wm. IV. c. 66, s. 6 in part; 2 & 3 Wm. IV. c. 123, s. 1; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3); of deeds, bonds, court-rolls, receipts for money or goods, or accountable receipts, or orders for the delivery of goods (11 Geo. IV. & 1 Wm. IV. c. 66, s. 10); of entries in registers of marriages heretofore kept, or in registers of baptisms or burials heretofore or hereafter to be kept by the officiating minister of the parish, &c., or of marriage licences (11 Geo. IV. & 1 Wm. IV. c, 66, s. 20 in part; 6 & 7 Wm. IV. c. 86, ss. 43 and 49); of wills and other testamentary writings, and of powers of attorney to transfer any public stock transferable at the Banks of England or Ireland or the South-Sea House, or to receive any dividend in respect of any such stock (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 3 and 6; 2 & 3 Wm. IV. c. 123, s. 2; 7 Wm. IV. & 1 Vict. c. 84, ss. 1 and 3); of certificates, &c. of the commissioners for granting relief to Trinidad, British Guiana, St. Lucie, and the island of Dominica (2 & 3 Wm. IV. c. 125, s. 65; 5 & 6 Wm. IV. c. 51; 7 Wm. IV. & 1 Vict. c. 84, ss. 1 and 3); of receipts or certificates of the Slave-Compensation Commissioners (5 & 6 Wm. IV. c. 45, s. 12; 7 Wm. IV. & 1 Vict. c. 84, ss. 1 and 3); of receipts for subscriptions towards the sum of four millions for funding Exchequer-bills (2 & 3 Vict. c. 97, s. 32).

2. Offending a third time* in uttering counterfeit gold or silver foreign coin not permitted to be current within this realm. (37 Geo. III. c. 126, s. 4; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 1 and 26.)

3. Personating seamen, marines, or other persons entitled to any allowance from the Compassionate Fund of the navy, in order to receive their pay or prize-money, or allowance from the Compassionate Fund. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 84 and 88.)

4. Taking false oath in order to obtain probate of the will or administration of the effects of deceased seamen or marines, or demanding their pay or prize-money by virtue of such will or administration, &c. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 85 and 88.)

5. Making false entries in the books of the Bank, or of the South Sea Company, or making transfers of stock transferable at either of those places, in the names of persons not being the true owners thereof. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 5; 2 & 3 Wm. IV. c. 123, s. 1; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3.)

6. Personating the owner of any such last-mentioned stock, or of the capital stock of any corporate body, &c. established by charter or act of parliament, or of any dividend payable in respect of such stock, and thereby transferring or endeavouring to transfer such stock, or receiving or endeavouring to receive such dividend. (11 Geo. IV. & 1 Wm. IV. c 66, s. 6 in part, and 7; 2 & 3 Wm. IV. c. 123, s. 1; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 84, ss. 2 and 3.)

7. Acknowledging any recognizance or bail, cognovit actionem, judgment or deed to be enrolled, in the name of any person not privy thereto. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 11.)

8. Destroying or injuring registers of

contained in the 48 Geo. III. c. 1, shall be applied and extended to the Exchequer-bills to be made out in pursuance of such Appropriation Acts, as fully and effectually, to all intents and purposes, as if the said several clauses or provisoes had been particularly repeated and re-enacted in the body of those acts. (See Lonsdale's 'Statute Criminal Law,' p. 99, in note.)

* The punishment for offending a second time is imprisonment for two years, and the offender to find sureties for good behaviour for two years more, to be computed from the end of the first two years; and for offending a first time is imprisonment for six months, and the offender to find sureties for good behaviour for six months more, to be computed from the end of the first six months · 37 Geo. III c. 126, s. 4.)

marriages heretofore kept, or registers of baptisms or burials heretofore or hereafter to be kept by the officiating minister of the parish, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 20 in part; 6 & 7 Wm. IV. c. 86, ss. 43 and 49.)

9. Officers of the Bank or South Sea Company secreting, embezzling, or running away with securities or effects. (15 Geo. II. c. 13, s. 12; 24 Geo. II. c. 11, s. 3; 35 Geo. III. c. 66, s. 6; 37 Geo. III. c. 46, s. 6; 4 & 5 Vict. c. 56, s. 1.)

10. Privately or secretly using stamps provided in pursuance of any Stamp Act, with intent to defraud her Majesty of any duties granted by such act. (52 Geo. III. c. 184, s. 7; 55 Geo. III. c. 185, s. 7; 9 Geo. IV. c. 18, s. 35; 4 & 5 Vict. c. 56, ss. 1 and 4.)

11. Fraudulently tearing off or removing stamps from vellum, parchment, paper, gold or silver plate, &c., with intent to use them again. (55 Geo. III. c. 184, s. 7; c. 185, s. 7; 4 & 5 Vict. c. 56, ss. 1 and 4.)

12. Offenders transported from St. Helena coming into England before the expiration of their term of transportation. (6 Geo. IV. c. 85, s. 18; 4 & 5 Vict. c. 56, ss. 1 and 4.)

13. Riotously destroying places of worship or houses, or buildings connected with trade or the business of mines. (7 & 8 Geo. IV. c. 30, s. 8; 4 & 5 Vict. c. 56, ss. 1 and 4; 6 & 7 Vict. c. 10.)

XI. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four nor less than two years.

1. Being possessed, without lawful excuse, of forged dies &c., or of any vellum, parchment or paper having thereon the impression of any forged die &c., or fraudently using any stamp which shall have been removed from any other vellum &c.; or getting out of or from any vellum &c. any matter or thing thereon expressed, with intent to use the stamp then being thereon, for any instrument or thing liable to stamp duty, &c. (3 & 4 Wm. IV. c. 97, ss. 11 and 12; 4 & 5 Wm. IV. c. 60.)

2. Forgery of postage stamps; or privately or fraudulently using such stamps, or, without lawful excuse, being possessed of any paper or other material so privately or fraudulently stamped. (3 & 4 Vict. c. 96, s. 22.)

XII. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four years, with or without hard labour or solitary confinement, or with both; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Sending threatening letters with intent to extort money, &c. (7 & 8 Geo. IV. c. 29, ss. 4 and 8.)

2. Corruptly taking any reward for helping to property which has been stolen, &c. (unless the person so taking such reward, cause the offender to be apprehended and tried for the same. (7 & 8 Geo. IV. c. 29, ss. 4 and 58.)

3. Destroying or damaging goods of silk, woollen, linen or cotton, &c. whilst in progress of manufacture, or any machine or implement used therein, or forcibly entering any place to commit any of those offences. (7 & 8 Geo. IV. c. 30, ss. 3 and 27.)

4. Breaking down sea-banks &c., whereby any land shall be in danger of being overflowed or damaged; or destroying works on navigable rivers or canals. (7 & 8 Geo. IV. c. 30, ss. 12 and 27.)

5. Destroying &c. public bridges. (7 & 8 Geo. IV. c. 30, ss. 13 and 27.)

XIII. *Transportation for life* or not less than seven years, or imprisonment not exceeding four years, with or without hard labour or solitary confinement, or with both.

1. Counterfeiting the queen's current gold or silver coin. (2 Wm. IV. c. 34, ss. 3 and 19.)

2. Gilding, or silvering or colouring counterfeit coin or any pieces of metal, with intent to make them pass for the queen's current gold or silver coin; or colouring or altering genuine coin, with intent to make it pass for a higher coin. (2 Wm. IV. c. 34, ss. 4 and 19.)

3. Buying &c. or putting off &c. at a lower value than the same by its denomination imports, or importing into the kingdom, counterfeit coin intended to pass for the queen's current gold or silver

coin, knowing the same to be counterfeit. (2 Wm. IV. c. 34, ss. 6 and 19.)

4. Having been convicted of uttering counterfeit coin intended to pass for the queen's current gold or silver coin,* or having been convicted of uttering such coin and being possessed at the time of such uttering of more such coin, or having, on the same day or within ten days afterwards, uttered more such coin,† afterwards committing any of such offences. (2 Wm. IV. c. 34, ss. 7 and 19.)

5. Having been convicted of having in possession three or more pieces of counterfeit coin intended to pass for the queen's current gold or silver coin, with intent to utter the same,‡ afterwards committing the like offence. (2 Wm. IV. c. 34, ss. 8 in part and 19.)

6. Without lawful authority, making, buying or selling, or having in possession, &c. any instrument adapted for counterfeiting the queen's current gold or silver coin. (2 Wm. IV. c. 34, ss. 10 and 19.)

7. Without lawful authority, conveying out of the Mint instruments of coining, or any coin, bullion, &c. (2 Wm. IV. c. 34, ss. 11 and 19.)

8. Persons employed under the Post Office stealing, embezzling, secreting, or destroying post letters containing money, &c. (7 Wm. IV. & 1 Vict. c. 36, ss. 26, 41, 42.)

9. Stealing money, &c. out of post letters. (7 Wm. IV. & 1 Vict. c. 36, ss. 27, 41, 42.)

10. Stealing post letter-bags, or post letters from post letter-bags or from post-offices, or from the officers of the post-office, or from mails; or stopping mails with intent to rob or search them. (7 Wm. IV. & 1 Vict. c. 36, ss. 28, 41, 42.)

11. Receiving letters or other property the stealing, &c. whereof is felony under the Post-office Acts, knowing the same to have been stolen, &c. (7 Wm. IV. & 1 Vict. c. 36, ss. 30, 41, 42.)

12. Forgery of the name or handwriting of the Receiver-General of the General Post-office, &c. to any draft &c. on the Bank. (7 Wm. IV. & 1 Vict. c. 36, ss. 33, 41, 42.)

XIV. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four years, with or without hard labour.

1. Taking away or detaining, from motives of lucre, an heiress &c. against her will, with intent to marry or defile her, &c. (9 Geo. IV. c. 31, s. 19.)

XV. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four years, with or without hard labour; or such fine as the court shall award.

1. Manslaughter. (9 Geo. IV. c. 31, s. 9.)

XVI. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding four years.

1. Persons employed in the Public Record Office certifying as true false copies of records in the custody of the Master of the Rolls. (1 & 2 Vict. c. 94, s. 19 in part.)

2. Forgery of the signature of any Assistant Record Keeper, for the purpose of counterfeiting a certified copy of a record, or of the Seal of the Public Record Office. (1 & 2 Vict. c. 94, s. 19 in part.)

XVII. *Transportation for life* or not less than seven years, or imprisonment for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Breaking, entering and stealing in churches or chapels, or, having stolen therein, breaking out of the same. (7 & 8 Geo. IV. c. 29, s. 10; 5 & 6 Wm. IV. c. 81: 6 & 7 Wm. IV. c. 4.)

XVIII. *Transportation* for any term not exceeding *fifteen* nor less than ten years, or imprisonment for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Stealing in a dwelling-house* to the

* The punishment for uttering, in respect of a first offence, is imprisonment for any term nor exceeding one year, with or without hard labour or solitary confinement, or with both.

† The punishment for uttering, accompanied by the aggravation above specified, is, for a first offence, imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement, or with both.

‡ See the punishment for a first offence, p. 213.

* For the purposes of this and the next offence

value of 5*l.* or more. (7 & 8 Geo. IV. c. 29, s. 12; 2 & 3 Wm. IV. c. 62; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 90, ss. 1 and 3.)

2. Breaking, entering and stealing in a dwelling-house to any value. (7 & 8 Geo. IV. c. 29, s. 12; 3 & 4 Wm. IV. c. 44, s. 2; 7 Wm. IV. & 1 Vict. c. 90, ss. 1 and 3.)

3. Cattle-stealing or killing cattle, with intent to steal the carcass or skin or any part of the cattle so killed. (7 & 8 Geo. IV. c. 29, s. 25; 2 & 3 Wm. IV. c. 62; 3 & 4 Wm. IV. c. 44, s. 3; 7 Wm. IV. & 1 Vict. c. 90, ss. 1 and 3.)

4. Breaking, entering and stealing in buildings within the curtilage of a dwelling-house, but having no communication with the dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other. (7 & 8 Geo. IV. c. 29, ss. 13 and 14; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

5. Breaking, entering and stealing in shops, warehouses or counting-houses. (7 & 8 Geo. IV. c. 29, s. 15; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

6. Stealing to the value of 10*s.* goods of silk, woollen, linen or cotton, &c., whilst exposed in any place during any stage of manufacture. (7 & 8 Geo. IV. c. 29, s. 16; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

7. Stealing goods from vessels &c. in ports or upon navigable rivers or canals &c., or from docks or quays &c. adjacent thereto. (7 & 8 Geo. IV. c. 29, s. 17; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

8. Maliciously killing, maiming or wounding cattle. (7 & 8 Geo. IV. c. 30, s. 16; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

9. Maliciously destroying hop-binds growing on poles in hop plantations. (7 & 8 Geo. IV. c. 30, s. 18; 7 Wm. IV. & 1 Vict. c. 90, ss. 2 and 3.)

10. Stealing in a dwelling-house,* and by threats or menaces putting any inmate in bodily fear. (7 Wm. IV. & 1 Vict. c. 86, ss. 5 and 7.)

11. Robbery or stealing from the person. (7 Wm. IV. & 1 Vict. c. 87, ss. 5 and 10.)

12. Plundering vessels in distress, or wrecked, stranded or cast on shore, or anything belonging to any such vessel. (7 Wm. IV. & 1 Vict. c. 87, ss. 8 and 10.)

13. Maliciously destroying any part of a vessel in distress, or wrecked, stranded or cast on shore, or anything belonging to such vessel. (7 Wm. IV. & 1 Vict. c. 89, ss. 8 and 12.)

XIX. *Transportation* for *fourteen* years.

1. Solemnizing matrimony at any other time than that prescribed by law, or without banns, unless by licence or under the provisions of the 6 & 7 Wm. IV. c. 85 (which allows marriages to take place before the Registrar of the district);† or pretending to be in holy orders, and solemnizing matrimony according to the rites of the Church of England. (4 Geo. IV. c. 76, s. 21.)

2. Being possessed &c., without lawful excuse, of forged bank-notes, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 12 and 28.)

3. Without the authority of the Bank, making or being possessed of instruments for making, &c. paper used by the Bank for bank-notes, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, s. 13.)

4. Without the authority of the Bank, engraving, making or being possessed of instruments for making, &c. bank-notes, &c., or any character or ornament resembling any part of a bank-note, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 15 and 16.)

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no building, although within the curtilage of a dwelling-house, shall be deemed to be part of such dwelling-house, which would not be deemed to be so for the purpose of burglary; that is, no building between which and the dwelling-house there is not a communication, either immediate or by means of a covered and inclosed passage leading from the one to the other. See the 7 & 8 Geo. IV. c.29, s. 13.

* See the 7 & 8 Geo. IV. c. 29, s. 13, referred to in note * p. 195; it is doubtful, however, if the definition of the term "dwelling-house" there contained, apply to the above offence; though in all probability it would be held to do so, the above offence being contained in the one (see 7 & 8 Geo. IV. c. 29, s. 12) to which that definition was intended to apply.

† See below, the punishment for solemnizing marriages contrary to the provisions of 6 & 7 Wm. IV. c. 85.

XX. *Transportation* for any term not exceeding *fourteen* years.

. Aiding prisoners to escape, or in attempting to escape from prison, whether an actual escape be made or not. (4 Geo. IV. c. 64, s. 43.)

2. Rescuing offenders sentenced to be transported or banished. (5 Geo. IV. c. 84, s. 22.)

3. Forging certificates given under the Income Tax Act. (5 & 6 Vict. c. 35, s. 181, continued by 8 & 9 Vict. c. 4.)

XXI. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years nor less than one year, with or without hard labour or solitary confinement, or with both.

1. Forgery of memorials or certificates of registry, &c. of lands in Yorkshire or Middlesex (2 & 3 Anne, c. 4, s. 19; 5 Anne, c. 18, s. 8; 6 Anne, c. 35, s. 26; 7 Anne, c. 20, s. 15; 8 Geo. II. c. 6, s. 31; 11 Geo. IV. & 1 Wm. IV. c. 66, ss. 23 and 26); or of extracts from registers of marriage, baptism or burial, in order to sustain any claim to any allowance from the Compassionate Fund of the Navy, &c. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 87 in part and 88.)

2. Subscribing false petitions to the secretary of the Admiralty, or personating the representatives of deceased seamen or marines, in order to procure a certificate from the Inspector of Royal Marines, &c., thereby to obtain, without probate or letters of administration, any allowance from the Compassionate Fund of the Navy, &c. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 86 and 88; 2 Wm. IV. c. 40.)

3. Making false affidavits, &c. in order to procure any person to be admitted a pensioner as the widow of an officer of the royal navy, &c. (11 Geo. IV. & 1 Wm. IV. c. 20, ss. 87 in part and 88.)

4. Without authority, making or being possessed of instruments for making, &c. paper used by any other bank than the Bank of England. (11 Geo. IV. & 1 Wm. IV c. 66, ss. 17 and 26.)

5. Without authority, engraving, making or being possessed of instruments for making, &c. the notes, &c. of any other bank than the Bank of England. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 18 and 26.)

6. Without authority, making or being possessed of instruments for making, &c. foreign bills, notes, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 19 and 26.)

XXII. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years nor less than one year.

1. Subscribing or publishing, &c. false petitions to the Inspector of seamen's wills, in order to obtain a cheque or certificate in lieu of probate or letters of administration, in cases where deceased's assets do not exceed 32*l.* and 20*l.* respectively. (2 Wm. IV. c. 40, s. 33.)

XXIII. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years, with or without hard labour or solitary confinement, or with both; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Stealing by clerks or servants. (7 & 8 Geo. IV. c. 29, ss. 4 and 46.)

2. Embezzlement by clerks or servants. (7 & 8 Geo. IV. c. 29, ss. 4 and 47.)

3. Receiving property, the stealing or taking whereof is felony, knowing the same to have been stolen, &c. (7 & 8 Geo. IV. c. 29, ss. 4 and 54.)

4. Boatmen and others concealing &c., and not reporting according to law, or obliterating the marks &c. on, anchors or other articles found by them on the coast, &c. (provided the stealing of such articles on shore would amount to felony). (1 & 2 Geo. IV. c. 75, s. 1; and c. 76.)

XXIV. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Impairing or lightening the queen's current gold or silver coin, with intent to make the same, when so impaired &c., pass for the queen's current gold or silver coin. (2 Wm. IV. c. 34, ss. 5 and 19.)

2. Stealing post letter-bags from Post-office packets, or unlawfully taking letters out of or opening such bags. (7 Wm. IV. & 1 Vict. c. 36, ss. 29, 41 and 42.)

XXV. *Transportation* for any term not

exceeding *fourteen* nor less than seven years, or imprisonment not exceeding three years, with or without hard labour.

1. Embezzlement by public officers. (2 Wm. IV. c. 4, c. 1.)

2. Forgery &c. of assay marks on gold or silver wares; or fradulently using genuine dies provided for marking such wares. (7 & 8 Vict. c. 22, s. 2.)

XXVI. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment not exceeding two years, with or without hard labour or solitary confinement, or with both.

1. Officer of the court certifying as true, &c. any false copy of a previous conviction &c. of any offence relating to the coin, where a person shall be subsequently indicted for any such offence. (2 Wm. IV. c. 34, ss. 9 and 19.)

XXVII. *Transportation* for any term not exceeding *fourteen* years, or confinement not exceeding five nor less than three years, with hard labour.

1. Trading in slaves either directly or indirectly, or entering into contracts in connexion therewith; or forging certificates of valuation, sentences or decrees of condemnation or restitution, &c. (5 Geo. IV. c. 113, s. 10; 3 & 4 Wm. IV. c. 73.*)

XXVIII. *Transportation* for the term of *fourteen* years, or, in mitigation or commutation of such punishment, the offender to be publicly whipped, fined or imprisoned, or all or any one or more of them.

1. Obliterating &c. the marks denoting her Majesty's property, in any warlike or naval, ordnance or victualling, or other public stores, for the purpose of concealing her Majesty's property in such stores. (9 & 10 Wm. III. c. 41; 39 & 40 Geo. III. c. 89, ss. 4 and 7; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138.)

XXIX. *Transportation* for *seven* years.

1. Obstructing the execution of process, &c. within the hamlet of Wapping, Stepney, or any other place within the limits of the weekly bills of mortality, wherein persons shall unlawfully assemble and associate for the sheltering themselves from their debtors, of which complaint shall have been made by a presentment of the grand jury at a general or quarter sessions of the proper county. (11 Geo. I. c. 22, ss. 1 and 2.)

2. Aiding the escape from officers of justice of prisoners in their custody for the purpose of being carried to gaol by virtue of a warrant of commitment for treason or felony, or the escape of felons on their way for transportation. (16 Geo. II. c. 31, s. 3.*)

3. Riotously assembling, to the number of five or more, to rescue offenders against the Acts relating to spirituous liquors; or assaulting persons who have given &c. evidence &c. against such offenders, &c. (24 Geo. II. c. 40, s. 28.)

4. Prisoners for debt not delivering in under the Lords' Act a true account of all their estate and effects, &c.† (32 Geo. II. c. 28, s. 17; 33 Geo. III. c. 5; 39 Geo. III. c. 50.)

5. Damaging, &c. buoys &c. fixed to the anchors or moorings of vessels in the Thames, with intent to steal the same. (2 Geo. III. c. 28, s. 13.)

6. Being convicted a second time‡ of unlawfully stopping or attempting to stop or of otherwise preventing the conveyance of grain to or from any city, market-town or place in the kingdom. (11 Geo. II. c. 22; 36 Geo. III. c. 9, ss. 2 and 6.)

7. With intent to prevent the removal of grain, pulling down or otherwise destroying granaries, &c. (36 Geo. III. c. 9, s. 2.)

* *See also* 3 & 4 Vict. c. 111.

* See also 1 & 2 Geo. IV. c. 88, s. 1, which, under certain circumstances, inflicts transportation for seven years, or imprisonment not exceeding three years nor less than one year, upon persons rescuing or aiding in rescuing prisoners apprehended for felony, whilst in the personal custody of a constable or other person. The statute regards the offender in such case as an accessory after the fact, and therefore guilty of felony.

† This offence appears to be incidentally repealed by 1 & 2 Vict. c. 110, s. 119, which enacts that after the passing of that act, no prisoner for debt shall petition any court for his discharge under the provisions of 32 Geo. II. c. 28, nor shall any creditor of any prisoner petition any court for the exercise of the compulsory power given against debtors under the provisions of that act.

‡ The first offence is punishable, on summary conviction, with imprisonment and hard labour for any term not exceeding three months nor less than one month.

8. Forgery of declarations of the return of premiums on policies or contracts of insurance. (54 Geo. III. c. 133, s. 10; 54 Geo. III. c. 144, s. 11.)

9. Forcibly rescuing offenders or goods seized under 6 Geo. IV. c. 80 (for repealing the duties on spirits distilled in England, &c.), or otherwise forcibly opposing the execution of the powers of that Act. (6 Geo. IV. c. 80, s. 143.)

10. Being found in company with more than four persons with smuggled goods, or in company with only one person, within five miles of the coast, &c. with such goods, and armed or disguised. (8 & 9 Vict. c. 87, s. 65.)

11. Forgery of the superscription of a post letter, with intent to avoid the payment of postage.* (7 Wm. IV. & 1 Vict. c. 36, s. 34.)

XXX. *Transportation* for any term not exceeding *seven* years.

1. Forgery of the seal, &c. of the British Society for extending the Fisheries and improving the Sea-Coasts of the Kingdom. (26 Geo. III. c. 103, s. 26.)

2. Administering oaths intended to bind the person taking the same to engage in any seditious purpose, &c., or to be of any association or confederacy formed for any such purpose, &c. (37 Geo. III. c. 123, s. 1.)

3. Counterfeiting foreign gold or silver coin, not permitted to be current within the realm. (37 Geo. III. c. 126, s. 2.)

4. Bringing any such coin into the realm with intent to utter the same. (37 Geo. III. c. 126, s. 3.)

5. Boatmen &c. conveying anchors &c. which they know to have been swept for or otherwise taken possession of without being reported according to law, to any foreign port &c., and there disposing of the same. (1 & 2 Geo. IV. c. 75, s. 15.)

XXXI. *Transportation* for *seven* years, or imprisonment for any period not less than two years.

1. Without lawful excuse, making or being possessed of any instrument for making the paper used for permits by the Commissioners of Excise, or being possessed of any such paper, or engraving &c. any plate &c. for making or printing the paper used for permits, &c. (2 Wm. IV. c. 16, s. 3.)

2. Without lawful excuse, making or being possessed of instruments for making the paper to be used for postage covers, or being possessed of any such paper, or by any means imitating or causing to appear in any paper the marks or threads, &c. to be used in postage covers. (3 & 4 Vict. c. 96, s. 29.)

XXXII. *Transportation* for *seven* years, or imprisonment not exceeding four years.

1. Forgery of certificates or bills of exchange mentioned in 2 & 3 Wm. IV. c. 106 (An Act for enabling Officers, &c. in the Army to draw for their Half-Pay and Allowances). (2 & 3 Wm. IV. c. 106, s. 3.)

XXXIII. *Transportation* for *seven* years, or imprisonment for any term not exceeding three years nor less than one year, with hard labour.

1. Forgery of the seals, stamps or signatures of such certificates, official or public documents, proceedings of corporations, or joint stock or other companies, or certified copies of such documents or proceeding, as are receivable in evidence in Parliament or in any judicial proceedings, or tendering in evidence such certificates, &c. with false or counterfeit seals &c. thereto; or

2. Forgery of the signature of any equity or common law judge of the Superior Courts at Westminster, to any judicial or official document, or tendering in evidence any such document with a false, &c. signature of any such judge thereto; or

3. Printing copies of private acts or of the journals of either House of Parliament, which copies shall falsely purport to have been printed by the printers to the Crown or either House of Parliament, or tendering in evidence any such copy, knowing that the same was not printed by the persons by whom it so purports to have been printed. (8 & 9 Vict. c. 113, s. 4.)

XXXIV. *Transportation* for *seven* years, or imprisonment for any term not exceeding three years, with or without

* There are still some cases to which this enactment is applicable.

hard labour or solitary confinement, or with both.

1. Persons employed under the Post-Office stealing, embezzling, secreting or destroying post-letters. (7 Wm. IV. & 1 Vict. c. 36, ss. 26 and 42.)

XXXV. *Transportation* for *seven* years, or imprisonment for any term not exceeding two years nor less than one year, with or without hard labour or solitary confinement, or with both.

1. Forgery of the name or handwriting of witnesses attesting the execution of powers of attorney to transfer any public stock transferable at the Bank or South Sea House, or any capital stock of any body corporate &c. established by charter or act of parliament, or to receive any dividend in respect thereof (11 Geo. IV. & 1 Wm. IV. c. 66. ss. 8 and 26.); or of copies of registers of baptisms, marriages,* or burials, directed by law to be transmitted to the registrar of the diocese; or making false entries in such copies, &c. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 22 and 26.)

2. Clerks &c. of the Bank or South Sea House, with intent to defraud any person, making out dividend warrants for a greater or less amount than the persons on whose behalf they are made out are entitled to. (11 Geo. IV. & 1 Wm. IV. c. 66, ss. 9 and 26.)

XXXVI. *Transportation* for *seven* years, or imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement, or with both; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Forgery of the stamps or seals on hides or skins (9 Anne, c. 11; 10 Anne, c. 99; 5 Geo. I. c. 2, s. 9; 52 Geo. III. c. 143, s 1; 7 & 8 Geo. IV. c. 28, ss. 8 and 1); of the stamps or seals used for stamping or sealing cambrics or lawns, in pursuance of 4 Geo. III. c. 37, A Act for the better establishing a manufactory of Cambrics and Lawns at Winchelsea, in the County of Sussex, &c. (4 Geo. III. c. 37, s. 26; 52 Geo. III. c. 143, s. 1; 7 & 8 Geo. IV. c. 28, ss. 8 and 9); of the stamps or seals on silk (1 Geo. III. c. 56, s. 5; 52 Geo. III. c. 143, s. 1; 7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 Wm. IV. c. 17, s. 1); of the name or handwriting of the registrar of the Court of Admiralty or High Court of Appeals of Prizes, &c., to any instruments relating to the money or effects of the suitors of those courts (53 Geo. III. c. 151, s. 12; 7 & 8 Geo. IV. c. 28, ss. 8 and 9); of quarantine certificates (6 Geo. IV. c. 78, s. 25; 7 & 8 Geo. IV. c. 28, ss. 8 and 9); of the name or handwriting of Her Majesty's Commissioners of Woods, Forests, Land Revenues, Works and Buildings, to any draft &c. for any money in the Bank &c. on account of such commissioners, &c. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 10 Geo. IV. c. 50, s. 124; 2 & 3 Wm. IV. c. 1, s. 1); or of the process of inferior courts for the recovery of debts and damages in personal actions (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 7 & 8 Vict. c. 19, s. 5 in part).

2. Obstructing the execution of process, &c. within Suffolk Place or the Mint, in the parish of St. George, in the county of Surrey. (9 Geo. I. c. 28, ss. 1 and 2; 7 & 8 Geo. IV. c. 28, ss. 8 and 9.)

3. Persons having preserved merchandise &c. belonging to vessels wrecked &c. within the jurisdiction of the Cinque Ports, selling or otherwise making away with the same, or in any manner altering the same with intent to prevent the discovery or identity thereof by the owners. (1 & 2 Geo. IV. c. 76, s. 8; 7 & 8 Geo. IV. c. 28, ss. 8 and 9.)

4. Quarantine officers deserting from their duty or permitting persons &c. to depart from lazarets &c., unless by permission under an order in council, &c.; or giving false certificates of vessels having duly performed quarantine. (6 Geo. IV. c. 78, s. 21; 7 & 8 Geo. IV. c. 28, ss. 8 and 9.)

5. Solemnizing marriages (except in the case of Quakers or Jews, or by special licence) in any other place than a

* As regards copies of registers of marriages, it would appear that this offence can now, since the passing of 6 & 7 Wm. IV. c. 86 (for registering births, deaths, and marriages, in England), be committed with respect to such copies only as were transmitted before that Act came into operation. It is still in full force, however, as regards registers of baptisms or burials. (See the 49th sect. of 6 & 7 Wm. IV. c. 86.)

church, chapel or registered office, or doing so in any such office in the absence of the registrar of the district, &c. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 6 & 7 Wm. IV. c. 85, s. 39.)

6. Superintendent registrars issuing certificates for marriage, or registering marriages, contrary to law; or registrars or superintendent registrars issuing licences for marriage, or solemnizing marriages, contrary to law. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 6 & 7 Wm. IV. c. 85, s. 40; 7 Wm. IV. & 1 Vict. c. 22, s. 3.)

7. Destroying, counterfeiting or inserting false entries in, the register-books directed to be provided by the Act for registering births, deaths, and marriages in England; or forging the seal of the register-office. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 6 & 7 Wm. IV. c. 86, s. 43.)

8. Officer of the court uttering false certificates of indictments and convictions of a previous felony; or any other person signing &c. such certificates as such officer, &c. (7 & 8 Geo. IV. c. 28, ss. 9 and 11.)

9. Simple larceny. (7 & 8 Geo. IV. c. 29, ss. 3 and 4.)

10. Deer-stealing, &c. where the deer are kept in enclosed lands. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 26.)

11. Deer-stealing, &c. where the deer are kept in unenclosed lands (for a second offence*); or offending a second time in committing any other offence relating to deer for which a pecuniary penalty only is imposed, whether such second offence be of the same description as the first or not. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 26.)

12. Deer-stealers &c. beating or wounding deer-keepers. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 29.)

13. Stealing oysters &c. from oyster-beds &c. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 36.)

14. Stealing or severing with intent to steal, ore, coal &c. from mines, &c. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 37.)

5. Stealing, or damaging with intent to steal, or maliciously destroying &c. trees &c. growing in parks &c. or grounds belonging to dwelling-houses, if the value of the article stolen or the amount of injury done exceeds 1*l.*, or growing elsewhere, if such value or amount exceeds 5*l.* (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 38; and c. 30, ss. 19 and 27.)

16. Stealing, or damaging with intent to steal, or maliciously destroying &c. trees &c., wherever growing, if the stealing thereof or the injury done is to the amount of a shilling at the least, and if the offender has been twice previously convicted.* (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 39; and c. 30, ss. 20 and 27.)

17. Stealing, or damaging with intent to steal, or maliciously destroying &c. plants, vegetable productions &c. growing in gardens, conservatories &c., if the offender has been previously convicted of any of such offences.† (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 42; and c. 30, ss. 21 and 27.)

18. Stealing, or breaking &c. with intent to steal, glass, fixtures &c. from buildings, or metal fences &c., belonging to dwelling-houses or fixed in any place dedicated to public use or ornament. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 44.)

19. Tenants or lodgers stealing chattels or fixtures let to be used with any house or lodging. (7 & 8 Geo. IV. c. 29, ss. 3, 4, and 45.)

20. Destroying &c. threshing-machines, or engines used in any other manufacture than those of silk, woollen, linen, or cotton goods, or of framework-knitted pieces, stockings, hose or lace. (7 & 8 Geo. IV. c. 30, ss. 4 and 27.)

21. Drowning mines, or obstructing airways, shafts &c. belonging to mines, with intent to damage or delay the work-

* The first offence is punishable on summary conviction only, by fine not exceeding 50*l.* (See 7 & 8 Geo. IV. c. 29, s. 26.)

* The first two offences are punishable on summary conviction only; the first by fine not exceeding 5*l.* over and above the value of the trees, &c., or amount of injury done, and the second by imprisonment and hard labour not exceeding twelve calendar months. (See 7 & 8 Geo. IV. c. 29, s. 39; and c. 30, s 20.)

† The first offence is punishable on summary conviction only, by imprisonment not exceeding six calendar months, with or without hard labour, or by fine not exceeding 20*l.* over and above the value of the plants &c., or the injury done. (See 7 & 8 Geo. IV. c. 29, s. 42; and c. 30, s. 21.)

ing of them. (7 & 8 Geo. IV. c. 30, ss. 6 and 27.)

22. Destroying or damaging engines for working mines, or any buildings or erections used in conducting the business of mines. (7 & 8 Geo. IV. c. 30, ss. 7 and 27.)

23. Damaging vessels otherwise than by fire, with intent to render them useless. (7 & 8 Geo. IV. c. 30, ss. 10 and 27.)

24. Damaging sea-banks or the banks of rivers, canals or marshes, or injuring navigable rivers or canals, with intent and so as thereby to obstruct the navigation thereof. (7 & 8 Geo. IV. c. 30, ss. 12 and 27.)

25. Maliciously setting fire to crops of grain or pulse, plantations of trees, heath, fern &c. (7 & 8 Geo. IV. c. 30, ss. 17 and 27.)

26. Offenders ordered to be confined in Parkhurst prison escaping or breaking prison, &c., after they have been already punished* for escaping therefrom, &c., or whilst in the custody of the person under whose charge they are confined. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 & 2 Vict. c. 82, s. 12.)

27. Rescuing offenders ordered to be confined in Parkhurst prison during their conveyance there or whilst in the custody of the person under whose charge they are confined. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 & 2 Vict. c. 82, s. 13.)

28. Persons having the custody of such offenders, allowing them to escape. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 & 2 Vict. c. 82, s. 13.)

29. Aiding in the escape of such offenders, or attempting to rescue them, although no rescue be made. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 1 & 2 Vict. c. 82, s. 13.)

30. Destroying, counterfeiting or making false entries in non-parochial registers of births, deaths, marriages, &c. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 3 & 4 Vict. c. 92, s. 8.)

31. Convicts confined in the Pentonville and Millbank prisons, being a second time* convicted of breaking prison or escaping during their conveyance to such prisons. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 5 & 6 Vict. c. 29, s. 24 in part; 6 & 7 Vict. c. 26, s. 22 in part.)

32. Rescuing or aiding in rescuing convicts during their conveyance to the Pentonville and Millbank prisons or during their imprisonment therein. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 5 & 6 Vict. c. 29, s. 25 in part; 6 & 7 Vict. c. 26, s. 23 in part.)

33. Persons having the custody of convicts in the Pentonville and Millbank prisons wilfully allowing them to escape or any person aiding such convicts to escape, although no escape be made, or attempting to rescue such convicts, or aiding in any such attempt, though no rescue be made. (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 5 & 6 Vict. c. 29, s. 25 in part; 6 & 7 Vict. c. 26, s. 23 in part.)

34. Acting as a bailiff of any inferior court for the recovery of debts or damages in personal actions, without lawful authority (7 & 8 Geo. IV. c. 28, ss. 8 and 9; 7 & 8 Vict. c. 19, s. 5 in part).

35. Workmen in mines in Cornwall removing or concealing ore with intent to defraud the proprietors of such mines. (2 & 3 Vict. c. 58, s. 10.)

XXXVII. *Transportation* for *seven* years, or imprisonment for any term not

* That is to say, by an addition, not exceeding two years, to the term of imprisonment for which they were subject to be confined at the time of their escape &c.; or, if under sentence of transportation, in such manner as such persons escaping &c. are liable to be punished. (See sect. 12.) By the same section attempts to break prison or escape from Parkhurst prison are made punishable with imprisonment not exceeding twelve calendar months in addition to the punishment of *which the offender was subject at the time to any such attempt.*

* The punishment for a first escape or breach of prison is by an addition, not exceeding three years, to the term of their imprisonment. (5 & 6 Vict. c. 29, s. 24 in part; 6 & 7 Vict. c. 26, s. 22 in part.) By the same sections of those Acts attempts to break out of the Pentonville and Millbank prisons or to escape therefrom, are punishable by an addition, not exceeding twelve calendar months, to the terms of the offenders' imprisonment. Also by sect. 21 of 5 & 6 Vict. c. 29, and sect. 19 of 6 & 7 Vict. c. 26, convicts in the Pentonville and Millbank prisons assaulting the governors or any of the officers or servants employed therein, are liable, upon conviction, to be imprisoned for any term not exceeding two years in addition to the term for which at the time of committing that offence they were subject to be confined, and, if males, may be ordered corporal punishment

exceeding two years, with or without hard labour; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Child-stealing. (9 Geo. IV. c. 31, s. 21.)

XXXVIII. *Transportation* for *seven* years, or imprisonment for any term not exceeding two years, with or without hard labour.

1. Bigamy. (9 Geo. IV. c. 31, s. 22.)

XXXIX. *Transportation* for any term not exceeding *seven* years, or imprisonment for any number of years.

1. Cutting away or in any way injuring or concealing buoys &c. belonging to vessels or attached to the anchors or cables of vessels, whether in distress or otherwise.* (1 & 2 Geo. IV. c. 75, s. 11.)

XL. *Transportation* for any term not exceeding *seven* years, or imprisonment not exceeding two years, with or without hard labour or solitary confinement, or with both.

1. Counterfeiting the queen's current copper coin; or, without lawful authority, making or being possessed of instruments for counterfeiting such coin; or buying or selling such coin at a lower value than it by its denomination imports. (2 Wm. IV. c. 34, ss. 12 and 19.)

XLI. *Transportation* for any term not exceeding *seven* years, or fine, imprisonment, and such corporal punishment by public or private whipping, as the court shall direct.

1. Slaughtering or flaying horses or other cattle without taking out the licence and giving the notice required by the Act for regulating slaughtering-houses, or doing so at any other time than within the hours limited by the Act, or not delaying to do so, when prohibited by the inspector. (26 Geo. III. c. 71, s. 8.)

IV. MISDEMEANORS.

Misdemeanors are punishable as follows, viz.: with

I. *Transportation* for *life*.

1. Being at large within the United Kingdom [after being sentenced to be banished under the provisions of the Roman Catholic Relief Act (10 Geo. IV. c. 7),] without some lawful excuse, after three calendar months from such sentence. (10 Geo. IV. c. 7, s. 36.)

II. *Banishment* for *life*.

1. Jesuits or members of Religious Orders or Societies of the Church of Rome, bound by monastic or religious vows, coming into the kingdom (10 Geo. IV. c. 7, s. 29);* or

2. Having obtained the Secretary of State's licence to come, not departing within twenty days after the expiration of the time mentioned in such licence, &c (10 Geo. IV. c. 7, s. 31.)

3. Within any part of the kingdom, becoming a Jesuit or member of any Society of the Church of Rome bound by monastic or religious vows. (10 Geo. IV c. 7, s. 34.)

III. *Transportation* for the term of *fourteen* years, or, in mitigation or commutation of such punishment, the offender to be publicly whipped, fined or imprisoned, or all or any one or more of them.

1. Not being a contractor with the Commissioners of the Navy, Ordnance or Victualling Office for her Majesty's use, selling, receiving or being possessed of any warlike or naval, ordnance, victualling or other public stores, without being able to produce a certificate from the Commissioners of the Navy &c., expressing the occasion &c. of such stores being so in possession.† (9 & 10 Wm. III

* The 1 & 2 Geo. IV. c. 76, s. 6, contains a similar provision as regards buoys &c. within the jurisdiction of the Cinque Ports, but subjects the offender to transportation not exceeding fourteen years.

* This and the next two offences do not apply to members of Female Societies. (10 Geo. IV. c. 7, s. 37.)

† The mode in which the 39 & 40 Geo. III. c. 89, s. 1, imposes the above penalties in respect of these offences, is by enacting that persons who commit them shall be deemed *receivers of stolen goods*, knowing them to have been stolen, and shall, on being convicted thereof in due form of law, be transported beyond the seas, for the term of fourteen years, *in manner as other receivers of stolen goods are directed to be transported by the laws and statutes of this realm;* and then by sec. 7 empowers the court to mitigate or commute the punishment as above mentioned: the punishment of receivers has, however, been since altered by the 7 & 8 Geo. IV. c. 29, ss. 54 and 55. It, therefore, becomes a question how far such alteration has modified the above punishment

c. 41; 9 Geo. I. c. 8, s. 3; 39 & 40 Geo. III. c. 89, ss. 1 and 7; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138, s. 2.)

2. Being a second time convicted (not being a contractor with the Commissioners of the Navy &c.) of being possessed of &c. certain of her Majesty's or other public stores, the being possessed &c. of which would not otherwise, as the first offence, subject a person to transportation. (9 & 10 Wm. III. c. 41; 39 & 40 Geo. III. c. 89, ss. 5 and 7; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138, s. 2.)

IV. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or fine or imprisonment, or both, such imprisonment to be with or without hard labour or solitary confinement, or with both.

1. Bankers, merchants &c. converting to their own use money or securities intrusted to them to be applied for a specified purpose. (7 & 8 Geo. IV. c. 29, ss. 4 and 49.)

2. Bankers, merchants &c. converting to their own use chattels, securities &c. intrusted to them for a special purpose, but without authority to sell or negotiate &c. the same. (7 & 8 Geo. IV. c. 29, ss. 4 and 49.)

3. Factors or agents pledging goods or merchandise intrusted to them for sale, as a security for money &c. borrowed &c. by them. (7 & 8 Geo. IV. c. 29, ss. 4 and 51.)

V. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or fine or imprisonment, or both.

1. Agents intrusted with goods making consignments &c. thereof, without the authority of their principals. (5 & 6 Vict. c. 39, s. 6.)

VI. *Transportation* for any term not exceeding *fourteen* nor less than seven years, or imprisonment, with hard labour, for any term not exceeding three years.

1. Being in any land, by night, to the number of three or more (any of them being armed), for the purpose of taking or destroying game* or rabbits. (9 Geo. IV. c. 69, s. 9.)

VII. *Transportation* for *seven* years.

1. Counterfeiting foreign copper or other coin of a less value than silver coin, not permitted to be current in this kingdom (for the second offence).* (43 Geo. III. c. 139, s. 3.)

VIII. *Transportation* for *seven* years, or fine or imprisonment, or both, such imprisonment to be with or without hard labour or solitary confinement, or with both.

1. Stealing, obliterating or destroying records or original documents belonging to Courts of Record, &c. (7 & 8 Geo. IV. c. 29, ss. 4 and 21.)

2. Stealing, destroying or concealing wills or other testamentary instruments, either during the life of the testator or after his death. (7 & 8 Geo. IV. c. 29, ss. 4 and 22.)

3. Stealing title-deeds. (7 & 8 Geo. IV. c. 29, ss. 4 and 23.)

4. Obtaining property by false pretences.† (7 & 8 Geo. IV. c. 29, ss. 4 and 53.)

IX. *Transportation* for *seven* years, or fine and imprisonment.

1. Forgery of permits, or knowingly accepting or receiving forged permits. (2 Wm. IV. c. 16, s. 4.)

X. *Transportation* for *seven* years, or the like punishment as for a misdemeanor at common law.‡

1. Purchasing or receiving anchors &c. which have been swept for or otherwise taken possession of, whether the same have belonged to vessels in distress or otherwise, if such anchors &c. have not been reported &c. according to law. (1 & 2 Geo. IV. c. 75, s. 12; and c. 76, s. 10.)

XI. *Transportation* for *seven* years, or imprisonment with or without hard labour.

1. Assaulting officers on account of the exercise of their duty in the pre-

* For the purposes of 9 Geo. IV. c. 69, the word "game" includes hares, pheasants, *partridges, grouse, heath* or moor game, black game, *and bustards.* (*See sec.* 13.)

* The punishment for a first offence is imprisonment not exceeding one year.

† See the 8 & 9 Vict. c. 109, s. 17, which declares that persons winning money, &c. by cheating at cards or other games, shall be guilty of obtaining such money, &c. by false pretences, and shall be punished accordingly.

‡ The punishment for a misdemeanor at common law is fine and imprisonment.

servation of vessels in distress, &c. (9 Geo. IV. c. 31, s. 24.)

XII. *Fine of* 40*l.*, or if the offender have not goods or chattels, lands or tenements to the value of 40*l.*, then imprisonment by the space of one half-year;* and, besides the before-mentioned punishment, the offender may be imprisoned with hard labour for a term not exceeding seven years, or *transported* for a term not exceeding *seven* years; and, in addition to or in lieu of the before-mentioned punishments, may be imprisoned with hard labour for any term not exceeding the term for which he may be imprisoned as aforesaid; and the offender on conviction cannot thenceforth be received as a witness in any court of record, unless the judgment given against him be reversed.

1. Subornation of perjury in any of the Queen's Courts of Chancery or Courts of Record, or in any Leet, View of Frankpledge, or Law-day, Ancient Demesne Court, Hundred Court, Court Baron, or in the Court or Courts of the Stannary in the counties of Devon and Cornwall; or suborning witnesses sworn to testify *in perpetuam rei memoriam.*† (5 Eliz. c. 9, ss. 3, 4, and 5; 29 Eliz. c. 5; 21 Jac. I. c. 28, s. 8; 2 Geo. II. c. 25, s. 2; 3 Geo. IV. c. 114; 7 Wm. IV. & 1 Vict. c. 23.)

XIII. *Fine of* 20*l.* and imprisonment for six months;‡ and besides the before-mentioned punishment the offender may be imprisoned with hard labour for a term not exceeding seven years, or *transported* for a term not exceeding *seven* years; and, in addition to or in lieu of the before-mentioned punishments, may be imprisoned with hard labour for any term not exceeding the term for which he may be imprisoned as aforesaid; and the offender on conviction cannot thenceforth be received as a witness in any Court of Record, unless the judgment given against him be reversed.

1. Perjury in any of the Courts mentioned above in the case of subornation of perjury, or by any person examined *ad perpetuam rei memoriam.* (5 Eliz. c. 9, ss. 6 and 7; 29 Eliz. c. 5; 21 Jac. I, c. 28, s. 8; 2 Geo. II. c. 25, s. 2; 3 Geo. IV. c. 114; 7 Wm. IV. & 1 Vict. c. 23.*)

2. Seamen or marines attempting to obtain their pay by means of forged certificates of their discharge from the queen's ships, or from hospitals or sick-quarters. (11 Geo. IV. & 1 Wm. IV. c. 20, s. 89; 7 Wm. IV. & 1 Vict. c. 23.†)

3. Forgery of certificates of the Commissioners for executing the office of Lord High Admiral, of the purchase or sale of any naval or victualling stores. (2 Wm. IV. c. 40, s. 32; 7 Wm. IV. & 1 Vict. c. 23.)

4. Making false declarations or signing false notices for the purpose of procuring marriages; or

5. Forbidding the issue of any superintendent registrar's certificate, by falsely representing oneself to be a person whose consent to such marriage is required by law. (6 & 7 Wm. IV. c. 85, s. 38; 7 Wm. IV. & 1 Vict. c. 23; 3 & 4 Vict. c. 72, s. 4.)

6. Making false statements for the purpose of their being inserted in registers of births, deaths, or marriages. (6 & 7 Wm. IV. c. 86, s. 41; 7 Wm. IV. & 1 Vict. c. 23.)

XIV. *Transportation* for *seven* years, or imprisonment with hard labour for any term not exceeding three years.

* It is only when the offender is prosecuted under 5 Eliz. c. 9, that he is liable to this portion of these penalties. If prosecuted at common law he is punishable with fine and imprisonment; but may be sentenced to the other penalties stated above. The common-law offence extends also to subornation of perjury in *any* judicial proceeding.

† See also 12 Geo. I. c. 29, s. 4 (made perpetual by 21 Geo. II c. 3), as to subornation of perjury and perjury, &c. by attorneys &c., for which the court may cause them, after an examination in a *summary way*, to be transported for seven years. The offence does not appear to be indictable.

‡ It is only when the offender is prosecuted under 5 Eliz. c. 9, that he is liable to this portion of these penalties. The punishment for the common-law offence is the same as for subornation of perjury; and perjury at common law may be in *any* judicial proceeding. Prosecutions are usually carried on for the offence as at common law, and not under the statute.

* There is a great number of public Acts, besides those mentioned above, by which cases of false swearing are declared to be perjury, or to be punishable as perjury; but it would have occupied too much space to have inserted them here.

† This and the next four offences subject the persons committing them to the penalties of perjury.

1. Assaulting or obstructing persons duly employed for the prevention of smuggling. (8 & 9 Vict. c. 87, s. 66.)

XV. *Transportation* for *seven* years, or imprisonment with or without hard labour for any period not exceeding three years; and during such imprisonment the offender may be publicly or privately whipped* as often and in such manner and form as the Court shall direct, not exceeding thrice.

1. Discharging or aiming fire or other arms, or discharging or attempting to discharge any explosive substance, at or near the person of the queen, or striking or attempting to strike at the person of the queen, or in any other manner throwing or attempting to throw anything at or upon her person, with intent to injure or alarm the queen or break the public peace, or whereby the public peace may be endangered; or having fire or other arms, or any explosive or dangerous matter or thing near the queen's person, with intent to use the same to injure or alarm her. (5 & 6 Vict. c. 51, s. 2.)

XVI. *Transportation* for *seven* years, or imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement, or with both; and the offender, if a male, may be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment.

1. Receiving property the stealing, taking &c. whereof is made an indictable misdemeanor by 7 & 8 Geo. IV. c. 29, knowing the same to have been unlawfully stolen, taken &c. (7 & 8 Geo. IV. c. 29, ss. 4 and 55.)

2. Boatmen and others concealing &c. and not reporting according to law, or literating the marks &c. on, arti s found by them on the coast (provided the stealing of such articles on shore would be an indictable misdemeanor). (1 & 2 Geo. IV. c. 75, s. 1; and c. 76.)

3. Maliciously destroying the dams of fish-ponds or mill-ponds, or poisoning fish-ponds. (7 & 8 Geo. IV. c. 30, ss. 15 and 27.)

XVII. *Transportation for seven* years, or imprisonment with hard labour for any term not exceeding two years.

1. Taking or destroying game* or rabbits by night, in any land or on any public road, path &c., or at the openings, gates &c. from such land into such public road &c., or entering any such land, by night, with any instrument for that purpose (for the third offence).† (9 Geo. IV. c. 69, s. 1; 7 & 8 Vict. c. 29, s. 1.)

2. Assaults on gamekeepers by persons found committing any of the last-mentioned offences. (9 Geo. IV. c. 69, s. 2; 7 & 8 Vict. c. 29, s. 1.)

XVIII. *Transportation* for any term not exceeding *seven* years, or imprisonment not exceeding two years.

1. Being guilty of an unlawful combination or confederacy. (37 Geo. III. c. 123, s. 1; 39 Geo. III. c. 79, ss. 2 and 8; 52 Geo. III. c. 104, s. 1; 57 Geo. III. c. 19, s. 25.)

2. Being present at meetings for the purpose of drilling persons to the use of arms &c., such meetings being unauthorized by her Majesty or the lieutenant or two justices of the peace of the county or riding, by commission or otherwise; or drilling persons to the use of arms, &c. (60 Geo. III. & 1 Geo. IV. c. 1, s. 1.)

XIX. *Imprisonment for life*, loss of the offender's right hand, and forfeiture of his goods and chattels, and of the profits of his lands during life.

1. Assaulting any judge of the queen's courts of law or equity, or any justice of assize, oyer and terminer, or general gaol delivery, whilst acting in his official capacity; or striking any person in the presence of any such judge or justice.‡ (Hawk. *P.C.* b. i. c. 21, s. 3; *Seventh Report of the Criminal Law Commissioners*, pp. 49 and 160.)

XX. *Imprisonment for life* and forfeit-

* It may be a question whether the 5 & 6 Vict. c. 51, s. 2, notwithstanding the provision of 1 Geo. IV. c. 57, quoted above (p. 187), has not extended the punishment of whipping to the case of female offenders. (See *Seventh Report of Criminal Law Commissioners*, p. 46.) The above offence is a high misdemeanor.

* For the definition of game, see p. 204, note *.

† The two first offences are punishable on summary conviction.

‡ This and the next offence are punishable at common law.

are of the offender's goods and profits of his lands.

1. Rescuing prisoners being in the presence of any such judge whilst acting in his official capacity. (Hawk. *P.C.* b. i. c. 21, s. 5; *Seventh Report of the Criminal Law Commissioners*, pp. 49 and 160.)

XXI. *Imprisonment for life*, and forfeiture* of all goods and chattels real and personal.

1. Being a second time† convicted of publishing fond, fantastical or false prophecies, to the intent thereby to make any rebellion or other disturbance &c. within the queen's dominions.‡ (5 Eliz. c. 15, s. 3.)

XXII. *Imprisonment for life.*

1. Hearing and being present at any other form of common prayer &c. than is mentioned and set forth in the Book of Common Prayer, having been twice§ previously convicted of the same. (5 & 6 Edw. VI. c. 1, s. 6; 13 & 14 Car. II. c. 4, s. 24.)

2. Clergymen of the Established Church using any other form of common prayer &c. than is set forth in the Book of Common Prayer, or speaking in derogation thereof, having been twice‖ previously convicted of any such offence.¶ (1 Eliz. c. 2, s. 6; 13 & 14 Car. II. c. 4, s. 24.)

3. Persons not having any spiritual promotion committing any such last-mentioned offence, after their first conviction.** (1 Eliz. c. 2, s. 8; 13 & 14 Car. II. c. 4, s. 24.)

4. In interludes, plays &c. declaring or speaking anything in derogation &c. of the Book of Common Prayer, or compelling or causing any parson or other minister to use any other form of common prayer &c. than is mentioned in the said book; or interrupting any parson or other minister in saying common prayer &c. in the form mentioned in the said book, having been twice* previously convicted of any such offence.† (1 Eliz. c. 2, s. 11; 13 & 14 Car. II. c, 4, s. 24.)

XXIII. *Imprisonment* for any term not exceeding *twelve* nor less than six months, and the offender to be liable to such other punishment as may by law be inflicted in cases of high misdemeanors.‡

1. Publishing in English newspapers anything tending to excite hatred of the queen, &c., as having been previously printed in some foreign paper which has not been so printed. (38 Geo. III. c. 78, s. 24.)

XXIV. *Fine* and *imprisonment*, with or without hard labour or solitary confinement, or with both.

1. Refusing to deliver up &c. post-letters which ought to have been delivered to any other person, or post-letters which shall have been found by the person so refusing or any other person, &c. (7 Wm. IV. & 1 Vict. c. 36, ss. 31 and 42.)

XXV. *Fine* and *imprisonment*, and such corporal punishment by public or private whipping as the court shall direct.

1. Persons who keep or use slaughter-houses or places, throwing into lime-pits &c., or destroying or burying, the hides of cattle slaughtered &c. by them; or,

* This forfeiture being by statute only, does not, as observed above, constitute the offence a felony.

† The punishment for the first offence is fine of 10*l.* and imprisonment for one year. (5 Eliz. c. 15, s. 2.)

‡ This offence may be considered to be virtually obsolete.

§ The punishment for the first offence is imprisonment for six months, and for the second is one year.

‖ The punishment for the first offence is imprisonment for six months, and for the second one year. (1 Eliz. c. 2, ss. 4 and 5.)

¶ Besides being imprisoned, the offender for the first offence forfeits the profits of all his spiritual benefices or promotions coming or arising in one whole year next after his conviction; and for his second and third offences, is to be deprived *ipso facto* of all his spiritual promotions. (1 Eliz. c. 2, ss. 4, 5, and 6.)

** The punishment for the first offence is imprisonment for one year. (1 Eliz. c. 2, s. 7.)

* The punishment for the first offence is forfeiture of 100 marks, or, if the offender do not pay the same within six weeks after his conviction, six months' imprisonment instead; and for the second offence is forfeiture of 400 marks, or, if the offender do not pay the same within six weeks after his conviction, twelve months' imprisonment instead. (1 Eliz. c. 2, ss. 9, 10, 12, and 13.)

† Besides being imprisoned for life, the person committing any of the above offences for the third time, forfeits all his goods and chattels; but this forfeiture being by statute only, does not, as above observed, constitute the offence a felony.

‡ The punishment for high misdemeanors at common law was fine, imprisonment and infamous corporal punishment; but the punishment of the pillory has been wholly abolished.

2. Persons, generally, being guilty of any offence against the Act for regulating slaughtering-houses for which no punishment is expressly provided. (26 Geo. III. c. 71, s. 9.)

XXVI. *Fine, imprisonment,* or other corporal punishment.

1. Procuring or soliciting infants to grant annuities, &c. (53 Geo. III. c. 141, s. 8.)

XXVII. *Imprisonment* and *fine* and ransom* to the queen.

1. Being sufficient to travel, not being assistant to the justices, when warned to ride with them, in aid to resist riots, &c. (2 Hen. V. st. 1, c. 8.)

2. Contemning, despising or reviling the sacrament of the Lord's Supper. (1 Edw. VI. c. 1, s. 1; 1 Eliz. c. 1, s. 14.)

XXVIII. *Imprisonment* and *ransom* at the queen's will.†

1. Forcible entry into lands and tenements. (5 Rich. II. st. 1, c. 8; 15 Rich. II. c. 2.‡)

XXIX. *Imprisonment* and *fine* at the queen's will.§

1. Any of the clergy enacting or promulgating &c. any constitutions or ordinances, provincial or synodal, or any other canons, without the royal assent and licence. (25 Hen. VIII. c. 19, s. 1; 1 Eliz. c. 1, s. 6.)

XXX. *Fine* and *imprisonment.*

1. Not assisting the justices to arrest persons holding lands &c. forcibly, after forcible entry made. (15 Rich. II. c. 2.)

2. Frauds by collectors or other officers intrusted with the receipt, custody or management of any part of the public revenues|| (50 Geo. III. c. 59, s. 2);—of any part of the revenue of Excise. (7 & 8 Geo. IV. c. 53, s. 44.)

3. Persons concerned in the transmitting or delivery of writs for the election of members of parliament, wilfully neglecting or delaying to transmit or deliver any such writ &c. (53 Geo. III. c. 89, s. 6.)

4. Gaolers exacting fees from prisoners for or on account of the entrance, commitment or discharge of such prisoners, or detaining prisoners for non-payment of fees.* (55 Geo. III. c. 50, s. 13.)

5. Furious driving, &c. by persons having charge of stage-coaches or public carriages, not being hackney-coaches drawn by two horses only, and not plying for hire as stage-coaches, whereby any person is injured. (1 Geo. IV. c. 4.)

6. Buying or selling offices, or keeping any place of business in any manner relating to the sale or purchase thereof.† (5 & 6 Edw. VI. c. 16; 49 Geo. III. c. 126, s. 3; 6 Geo. IV. c. 105, s. 10.)

7. Officers exacting fees from prisoners against whom no bill of indictment is found by the grand jury, or who are acquitted on their trial or discharged by proclamation for want of prosecution.‡ (55 Geo. III. c. 50, ss. 4 and 9.)

8. Officers of Customs or Excise by

* It would appear that where a person is to make fine and ransom, he is not to pay two different sums (Co.-Litt., 127 a); but, according to Dyer, p. 232, pl. 5, the ransom must be treble the fine at least.

† That is, the will of the queen as declared by her representatives, the judges, in her courts of justice.

‡ See also 4 Hen. IV. c. 8; 8 Hen. VI. c. 9; 31 Eliz. c. 11; 21 Jac. I. c. 15.

§ That is, as declared by the judges.

|| The offender is also, on conviction, rendered for ever incapable of holding or enjoying any office under the crown.

* They are also, upon conviction, rendered incapable of holding their offices. The 55 Geo. III. c. 50, s. 13, did not extend to the Queen's Bench prison, the Fleet, or the Marshalsea and Palace Courts. But now, by 5 & 6 Vict. c. 22, s. 11, which consolidates the Queen's Bench, Fleet, and Marshalsea Prisons, and enacts that the Queen's Bench Prison shall, after the passing of that act, be called the Queen's Prison, all fees and gratuities payable by prisoners on their entrance or discharge &c. from the Queen's Prison (except such as shall be sanctioned by the Lords of the Treasury, for work and labour actually performed for such prisoners) are abolished, and any officer who exacts any such fees or gratuities, or detains any prisoner on account of the non-payment thereof, is rendered incapable of holding his office, and is guilty of a misdemeanor punishable by fine and imprisonment. See also the 8 & 9 Vict. c. 114, which explains and amends the 55 Geo. III. c. 50.

† The punishment for this and the next twenty-five offences (6 to 31 inclusive), is not assigned them by the statutes creating them: they are merely misdemeanors by the statutes, but as such the common law punishment of fine and imprisonment attaches.

‡ The offender, on conviction, is also rendered incapable of holding his office. See the 8 & 9 Vict. c. 114, which explains and amends the 55 Geo. III. c. 50.

their misconduct causing waste, &c. in merchandise warehoused in warehouses under the Act for permitting goods imported to be secured in warehouses without payment of duty on first entry. (4 Geo. IV. c. 24, s. 72.)

9. By false certificates or representations endeavouring to obtain from Chelsea Hospital any pension, privilege or advantage.* (7 Geo. IV. c. 16, s. 25.)

10. Setting spring-guns or man-traps, except within a dwelling-house for the protection thereof. (7 & 8 Geo. IV. c. 18, ss. 1 and 4.)

11. Jesuits, or members of any religious order or society of the Church of Rome, bound by monastic or religious vows, within the United Kingdom, admitting any person to become a member of any such order or society.† (10 Geo. IV. c. 7, s. 23.)

12. Parish officers refusing to call meetings, &c. according to the provisions of the Act for the better Regulation of Vestries. (1 & 2 Wm. IV. c. 60, s. 11.)

13. Making false answers to any of the questions directed by the Reform Act to be put by the returning officer at elections of members of parliament, if required by any candidate, to any voter at the time of his tendering his vote. (2 & 3 Wm. IV. c. 45, s. 58.)

14. Refusing to attend, &c. the Poor Law Commissioners (4 & 5 Wm. IV. c. 76, s. 13); the Tithe Commissioners (6 & 7 Wm. IV. c. 71, s. 93); or the Copyhold Commissioners (4 & 5 Vict. c. 35, s. 94).

15. Forgery, &c. of protections from service in the navy. (5 & 6 Wm. IV. c. 24, s. 3.)

16. Making false declarations in cases where declarations are substituted for oaths by the Act for abolishing unnecessary Oaths. (5 & 6 Wm. IV. c. 62, s. 21.)

17. Executing &c. renewed ecclesiastical leases, knowing the recital required by law contained therein to be false. (6 & 7 Wm. IV. c. 20, s. 3.)

18. Making false statements in declarations required to be delivered to the Commissioners of Stamps and Taxes before being allowed to print and publish newspapers. (6 & 7 Wm. IV. c. 76, s. 6.)

19. Making, &c. false declaration of being qualified to be elected a member of the House of Commons. (1 & 2 Vict. c. 48, s. 7.)

20. Frauds in assignments of pensions for service in her Majesty's navy, royal marines or ordnance. (2 & 3 Vict. c. 51, s. 8.)

21. Making false declarations touching any of the matters contained in the Act for procuring Returns relative to Highways and Turnpikes. (2 & 3 Vict. c. 40, s. 9.)

22. Officers of railways making false returns, under the Act for regulating railways, to the committee of the Privy Council for Trade. (3 & 4 Vict. c. 97, s. 4.)

23. Making false returns of corn, under the Act regulating the importation of corn. (5 & 6 Vict. c. 14, s. 42.)

24. Making false entries in the Register Book of Copyrights. (5 & 6 Vict. c. 45, s. 12.)

25. Voters making false answers to returning officer at elections of members of of parliament. (6 & 7 Vict. c. 18, s. 81.)

26. Actuaries or other persons holding appointments in savings' banks, receiving deposits and not paying the same over to the managers of such banks, &c. (7 & 8 Vict. c. 83, s. 4.)

27. The registrar of joint-stock companies or any person employed under him, demanding or receiving any gratuity or reward beyond the fees allowed by law. (7 & 8 Vict. c. 110, s. 22.)

28. Directors of joint-stock companies by whom certificates of shares are issued, making false statements on such certificates as to the date of the first complete registration of such companies. (7 & 8 Vict. c. 110, s. 26 in part.)

29. Persons knowing dogs or skins or dogs found in their possession, by virtue of a search warrant, to be stolen dogs, or the skins of stolen dogs (for the second offence*). (8 & 9 Vict. c. 47, s. 3 in part.)

* The offender also forfeits all claim to pension or emolument on account of service, wounds or disability.

† This offence does not apply to female societies. (10 Geo. IV. c. 7, s. 37.)

* The first offence is punishable on summary conviction before two or more justices by payment of such sum, not exceeding 20*l.*, as to the justices shall seem meet.

30. Corruptly taking any reward for aiding persons to recover stolen &c. dogs. (8 & 9 Vict. c. 47, s. 6.)

31. Offences against the provisions of the 8 & 9 Vict. c. 100 (An Act for the regulation of the care and treatment o Lunatics), and the 8 & 9 Vict. c. 126 (An Act to amend the laws for the provision and regulation of Lunatic Asylums for counties and boroughs, and for the maintenance and care of Pauper Lunatics in England), declared by those Acts to be misdemeanors.

32. Using contemptuous words or gestures of or against the queen.*

33. Unlawful assemblies.

34. Routs.

35. Riots.

36. Affrays.

37. Conspiracy.

38. Bribery.†

39. Blasphemy.

40. Blasphemous or seditious libels.‡

41. Unlawfully refusing to serve public offices.

42. Executing official duties before taking oath of office and giving security, where the same are required by law.

43. Wilfully disobeying any statute, by doing what it prohibits or omitting what it commands, whereby the public are or may be injured.

44. Wilfully disobeying any lawful warrant, order or command of her Majesty, or any court or person acting in a public capacity and duly authorized in that behalf, where no other penalty or mode of proceeding is expressly provided.

45. Obstructing officers in the execution of any public office or duty.

46. Excess or abuse of authority by public officers.

47. Extortion by public officers.

48. Fraudulent misapplication by public officers of property under their control as such officers.

49. Unlawfully, and contrary to oath of office, disclosing matter the knowledge of which has been acquired in an official capacity.

50. Assaulting &c. persons on account of anything done by them in connexion with any judicial proceeding.

51. Contempts of courts of justice or magistrates, by uttering insulting, opprobrious, or menacing words, or by acts or gestures expressed or done in the face of such courts or in the presence of such magistrates.

52. By force, or by violent or outrageous conduct, interrupting the proceedings of courts of justice.

53. The wilful omission by judicial officers to do their duty.

54. Oppression by judicial officers.

55. Judicial officers taking bribes.

56. Bribing or otherwise corruptly influencing judicial officers.

57. Persons procuring themselves to be returned as jurors, with intent to obtain a verdict or any undue advantage for any person interested in a trial.

58. Unlawfully preventing persons from serving as jurors.

59. Jurors determining their verdict by any mode of chance.

60. Witnesses refusing to be sworn or to give evidence in judicial proceedings.

61. Unlawfully preventing witnesses from giving evidence in judicial proceedings.

62. Endeavouring to procure the commission of perjury.

63. Publishing statements, pending suits or prosecutions, with intent to excite prejudice for or against any party to such suits or prosecutions.

64. Fabricating false evidence.

65. By disposing of dead bodies, without giving notice to the coroner, in cases where inquests ought to be taken, obstructing the taking of such inquests.

66. Gaolers and others, contrary to their duty, allowing dead bodies to remain unburied and to putrefy, without giving notice to the coroner, in cases where inquests ought to be taken.

67. Challenging or provoking to fight, or to commit a breach of the peace.

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* This and the following fifty-two offences (29 to 84 inclusive) are misdemeanors at common law, and as such, punishable with fine and imprisonment. (See the Seventh Report of the Criminal Law Commissioners, and the authorities there cited.)

† See 5 & 6 Vict. c. 102, s. 20.

‡ These offences, when committed for a second time, were made punishable as high misdemeanors or by banishment, by 60 Geo. III. & 1 Geo. IV. c. 8; but 11 Geo. IV. & 1 Wm. IV. c. 73, repealed the latter portion of the punishment.

68. Open indecency in places of public resort or in view thereof.

69. Keeping gaming or other disorderly houses.*

70. Arresting or otherwise obstructing the burial of dead bodies.

71. Unlawfully disinterring dead bodies.

72. Buying or selling wives.

73. Selling unwholesome provisions.

74. Maliciously exposing persons labouring under contagious diseases in places of public resort.

75. Common nuisances.†

76. Corrupting wells or springs used by the public.

77. Innkeepers refusing to receive travellers, their inns not being fully occupied at the time, and a reasonable sum being tendered for accommodation.

78. Battery.

79. False imprisonment.

80. Assaults.

81. Persons maiming themselves, with intent to evade the discharge of any public duty.

82. Cheats.

83. Forgery, in cases where no punishment is provided by statute.

84. Concealing treasure-trove.

XXXI. *Forfeiture, fine* not exceeding 200*l.* and costs of suit, and also such further fine, and whipping and imprisonment, or any of them, in such manner and for such space of time as to the court shall seem meet.

1. Being possessed (not being a contractor with the Commissioners of the Navy, Ordnance or Victualling Office for her Majesty's use) of any of her Majesty's stores called canvass, or bewper otherwise called buntin, or of any cordage wrought with one or more worsted threads, or of any other public stores, the same not being charged to be new or not more than one-third worn. (39 & 40 Geo. III. c. 89, s. 2; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138, s. 2.)

2. Making, being possessed of or concealing (not being a contractor as last mentioned) any warlike or naval stores with the marks used to her Majesty's warlike, naval, or ordnance stores, or any other public stores. (9 & 10 Wm. III. c. 41; 9 Geo. I. c. 8; 17 Geo II. c. 40; 39 & 40 Geo. III. c. 89, s. 2; 54 Geo. III. c. 60; 55 Geo. III. c. 127; 56 Geo. III. c. 138, s. 2.)

XXXII. *Fine* not exceeding 500*l.*, or imprisonment for any term not exceeding two years, or both.

1. Aiding the escape of convicts from New South Wales or Van Diemen's Land. (9 Geo. IV. c. 83, s. 34.)

XXXIII. *Imprisonment*, with or without hard labour, for such term as the court shall award.

1. Unlawfully and carnally knowing girls above the age of ten and under the age of twelve years. (9 Geo. IV. c. 31, s. 17.)

XXXIV. *Fine* or *imprisonment*, or both, such imprisonment to be with or without hard labour or solitary confinement, or with both.

1. Unlawfully taking or killing hares or conies, in the night time, in warrens. (7 & 8 Geo. IV. c. 29, ss. 4 and 30.)

2. Unlawfully taking or destroying fish in waters running through or in lands adjoining or belonging to dwelling-houses.* (7 & 8 Geo. IV. c. 29, ss. 4 and 34.)

3. Unlawfully destroying turnpike or toll gates or houses, &c. (7 & 8 Geo. IV. c. 30, ss. 14 and 27.)

4. Officers of the Post-Office opening or detaining post letters† (7 Wm. IV. &

* The court may order hard labour for these offences. (3 Geo. IV. c. 114.) See 21 Geo. III. c. 49, s. 1, by which persons keeping places opened or used for public entertainment or amusement, or for public debating on Sundays, and to which persons are admitted by payment of money or tickets sold for money, are made punishable as in cases of disorderly houses, and incur the penalty of 200*l.* for every Sunday that such places are kept opened, recoverable by action of debt, &c.

† See 9 & 10 Wm. III. c. 7, s. 1, which makes the manufacture of squibs or fireworks (except by order of the Board of Ordnance or by the Artillery Company), or the fireing thereof in any public street, &c., a common nuisance.

* This offence does not extend to angling in the day-time; but persons doing so unlawfully are liable, on summary conviction, to forfeit any sum not exceeding 5*l.*

† This offence does not extend to (amongst other exceptions contained in the Act) the opening or detaining of letters in obedience to an express warrant in writing under the hand of one of the principal secretaries of state.

1 Vict. c. 36, ss. 25 and 42); or stealing, embezzling or destroying printed votes or proceedings in parliament, or newspapers, or other printed papers sent by the post, without covers or in covers, open at the sides. (7 Wm. IV. & 1 Vict. c. 36, ss. 32 & 42.)

XXXV. *Fine* or *imprisonment*, or both, such imprisonment to be with or without hard labour.

1. Forgery of hackney-carriage plates (1 & 2 Wm. IV. c. 22, s. 25); of stage-carriage plates (2 & 3 Wm. IV. c. 120, s. 32); or of the licences or tickets of drivers of hackney-carriages, drivers or conductors of stage-carriages, or watermen (1 & 2 Vict. c. 79, s. 12).

2. Frauds in applying for hackney-carriage or stage-carriage licences. (1 & 2 Wm. IV. c. 22, s. 33; 2 & 3 Wm. IV. c. 120, s. 10.)

XXXVI. *Fine* or *imprisonment*, or both.

1. Compounding offences,* or otherwise offending against the provisions of the 18 Eliz. c. 5 (An Act to redress disorders in common informers). (18 Eliz. c. 5, s. 4; 27 Eliz. c. 10; 56 Geo. III. c. 138, s. 2.)

2. Resisting the execution of any legal process, execution or extent, taken out by persons having debts owing to them from persons residing within the Whitefriars, Savoy, Salisbury Court, Ram Alley, Mitre Court, Fuller's Rents, Baldwin's Gardens, Montague Close, or the Minories, Mint, Clink, or Deadman's Place. (8 & 9 Wm. III. c. 27, s. 15; 56 Geo. III. c. 138, s. 2.)

3. Illegal brokerage. (53 Geo. III. c. 141, s. 9.)

4. Persons having the custody of offenders ordered to be confined in Parkhurst Prison, or Pentonville or Millbank Prison, carelessly allowing such offenders to escape. (1 & 2 Vict. c. 82, s. 13; 5 & 6 Vict. c. 29, s. 25 in part; 6 & 7 Vict. c. 26, s. 23 in part.)

5. Offences against the Foreign Enlistment Act. (59 Geo. III. c. 69, s. 2.)

6. Unlawfully taking unmarried girls under the age of 16 years out of the possession of those who have the lawful charge of them. (9 Geo. IV. c. 31, s. 20.)

7. Arresting clergymen on civil process while employed about the performance of divine service. (9 Geo. IV. c. 31, s. 23.)

8. Frauds by Excise officers in the granting of permits, or in the performance of their duties in relation to the same.* (2 Wm. IV. c. 16, s. 15.)

9. Altering, destroying, counterfeiting or trafficking in the register-tickets with which merchant seamen are required to provide themselves. (7 & 8 Vict. c. 112, s. 21.)

10. Making false answers to questions by the registrar of seamen, &c., with reference to the granting of such tickets. (7 & 8 Vict. c. 112, s. 22.)

11. Masters of merchant ships, without the sanction of the consul, &c., discharging or abandoning abroad persons belonging to their ships or crews, or, in case any such person should desert abroad, neglecting to notify the same in writing to such consul, &c. (7 & 8 Vict. c. 112, s. 46.)

12. Masters, mates or other officers of merchant ships, wrongfully forcing on shore, or leaving behind on shore or at sea, persons belonging to their ships or crews, before the completion of the voyage for which such persons were engaged, or the return of their ships to the United Kingdom.† (7 & 8 Vict. c. 112, s. 47.)

13. Masters of merchant ships omitting, when required by the consul, &c., on the complaint of three or more of their crew, to provide proper provisions, water or medicines, or the requisite quantity thereof, or using any provisions, &c. which the consul, &c. shall have signified to be unfit for use or inappropriate. (7 & 8 Vict. c 112, s. 57.)

* Besides the above punishment, the offender, upon conviction, is for ever disabled to pursue or be plaintiff or informer in any suit or information upon any statute, popular or penal, and also forfeits 10*l.*, recoverable by action of debt or information.

* The offender, on conviction, is also rendered incapable of holding any office or place in or relating to any of the revenues of the United Kingdom.

† See also 9 Geo. IV. c. 31, s. 30, which makes it a misdemeanor, punishable with imprisonment for such term as the court shall award, for masters of merchant ships to force on shore or refuse to bring home all such of the men whom they carried out as are in a condition to return.

XXXVII. *Imprisonment* for three years, and fine at the queen's pleasure.*

1. Champerty. (3 Edw. I. c. 25; 13 Edw. I. st. 1, c. 49; 28 Edw. I. st. 3, c. 11; 33 Edw. I. st. 2; 33 Edw. I. st. 3; 4 Edw. III. c. 11; 20 Edw. III. c. 4 and c. 5; 7 Rich. II. c. 15; 32 Hen. VIII. c. 9.)

2. Maintenance. (3 Edw. I. c. 28 and c. 33; 33 Edw. I. st. 3; 1 Edw. III. st. 2, c. 14; 4 Edw. III. c. 11; 20 Edw. III. c. 4 and c. 5; 1 Rich. II. c. 4 and c. 7; 7 Rich. II. c. 15; 32 Hen. VIII. c. 9.)

XXXVIII. *Great forfeiture.*

1. Disturbing any to make free election. (3 Edw. I. c. 5.)

XXXIX. *To be adjudged* incapable and disabled in law to have or enjoy any office or employment, ecclesiastical, civil or military, or any part in them, or any profit or advantage appertaining to them; and if the offender at the time of being convicted enjoy or possess any office, place or employment, the same is made void.

1. Having been educated in or professed Christianity within this realm, asserting that there are more Gods than one, or denying the Christian religion to be true or the Scriptures to be of Divine authority.† (9 & 10 Wm. III. c. 32, s. 1; 55 Geo. III. c. 160, s. 2.)

XL. *Imprisonment* and hard labour for any period not exceeding three years.

1. Insolvent debtors or petitioners for protection from process, omitting in their schedules any property, or retaining or excepting out of such schedules, as necessaries, property of greater value than 20*l*. with intent to defraud their creditors. (1 & 2 Vict. c. 110, ss. 99 and 121; 7 & 8 Vict. c. 96, s. 39.)

XLI. *Imprisonment* for any term not exceeding three years, with or without hard labour or solitary confinement, or with both.

1. Being possessed of three or more pieces of counterfeit coin intended to pass for the queen's current gold or silver coin, knowing the same to be counterfeit and with intent to utter the same. (2 Wm. IV. c. 34, ss. 8 in part and 19.)

XLII. *Imprisonment* with hard labour for any term not exceeding three years, either in addition to or in lieu of any other punishment or penalty which may be inflicted upon the offender.

1. Being armed, assaulting Excise officers whilst searching for or seizing commodities forfeited under any Act relating to the Excise or Customs, or whilst endeavouring to arrest offenders. (7 & 8 Geo. IV. c. 53, ss. 40 and 43.)

XLIII. *Imprisonment* for any term not exceeding three years, with or without hard labour.

1. Bankrupts or members of incorporated commercial or trading companies which shall be adjudged bankrupt, falsifying or destroying their books, &c., with intent to defraud their creditors. (5 & 6 Vict. c. 122, s. 34; 7 & 8 Vict. c. 111, s. 30.)

2. Publishing or threatening to publish libels, &c. with intent to extort money, &c. (6 & 7 Vict. c. 96, s. 3.)

XLIV. *Imprisonment* for one year and grievous fine at the queen's pleasure; or if the offender have not whereof, imprisonment for three years.

1. Misprision of felony by sheriffs, coroners, or other bailiffs. (3 Edw. I. c. 9.)

XLV. *Imprisonment* for one year and grievous fine; or if the offender have not whereof, imprisonment for two years.

1. Bailiffs not being ready, on the hue and cry, to arrest felons. (3 Edw. I. c. 9.)

XLVI. *Imprisonment* with or without hard labour for any term not exceeding two years, and fine, if the court shall think fit; and the offender may be required to find sureties for keeping the peace.

* That is, as declared by the judges. This punishment is taken from 33 Edw. I. st. 3 (Statute of Champerty); but see the other Acts referred to. The repeal of the offences of Champerty and Maintenance is recommended by the Criminal Law Commissioners. (See their Fifth Report.)

† For a first offence the above penalties may be relieved against by renunciation of such erroneous opinions in the same Court where the offender was convicted, within four months after such conviction. (s. 3.)

If a person be a second time convicted of any of the above offences, he is to be imprisoned for three years, and to be disabled to sue, &c. in any court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, civil or military, or benefice ecclesiastical, for ever within the realm. (s. 1.)

1. Assaults with intent to commit felony, or on any peace or revenue officer, or with intent to resist the lawful apprehension or detainer of any person, or in pursuance of any conspiracy to raise the rate of wages (9 Geo. IV. c. 31, s. 25); or on special constables* (9 Geo. IV. c. 31, s. 25; 1 & 2 Wm. IV. c. 41, s. 11).

XLVII. *Fine* and imprisonment not exceeding two years.

1. Being present at meetings unauthorised by her Majesty &c., for the purpose of being drilled to the use of arms, or, at any such meetings, being so drilled. (60 Geo. III. & 1 Geo. IV. c. 1, s. 1.)

2. Maliciously publishing defamatory libels, knowing them to be false. (6 & 7 Vict. c. 96, s. 4.)

XLVIII. *Imprisonment* for any term not exceeding two years, with or without hard labour or solitary confinement, or with both.

1. Soliciting the commission of any felony or misdemeanor punishable by the Post-Office Acts. (7 Wm. IV. & 1 Vict. c. 36, ss. 36 and 42.)

XLIX. *Imprisonment* with hard labour for any term not exceeding two years.

1. Personating voters at elections of members of Parliament. (6 & 7 Vict. c. 18, s. 83.)

L. *Imprisonment* with or without hard labour for any term not exceeding two years.

1. Women, by secret burying &c., endeavouring to conceal the birth of children of which they have been delivered. (9 Geo. IV. c. 31, s. 14.)

2. Bankrupt, within three months next preceding his bankruptcy, obtaining goods on credit under the false pretence of dealing in the ordinary course of trade. (5 & 6 Vict. c. 122, s. 35.)

3. Drunkenness or other misconduct of servants of railway companies.† (3 & 4 Vict. c. 97, s. 13.)

* Assaults on special constables may also be punished on summary conviction before two justices. (See 1 & 2 Wm. IV. c. 41.)

† This offence may be punished on summary conviction, with imprisonment not exceeding two calendar months or fine not exceeding 10*l.*, if the justice before whom complaint is made shall think fit to decide upon it, instead of sending the offender for trial at the Quarter-Sessions.

LI. *Imprisonment* for a term not exceeding two years.

1. Embarking on board slavers in the capacity of petty officers, seamen, &c. (5 Geo. IV. c. 113, s. 11; 3 & 4 Wm. IV. c. 73.)

2. Doing anything to obstruct carriages on railways or to endanger the safety of persons conveyed upon the same. (3 & 4 Vict. c. 97, s. 15.)

LII. *Imprisonment* for one year, and such further punishment by fine or imprisonment, or both, as to the court shall seem most proper, and the offender to give sureties for good behaviour and to be further imprisoned until they be given.

1. Witchcraft, fortune-telling &c., or pretending to discover where property supposed to be stolen or lost may be found. (9 Geo. II. c. 5, s. 4; 56 Geo. III. c. 138, s. 2.)

LIII. *Fine*, or *Imprisonment* not exceeding eighteen months, or both, with or without hard labour.

1. Dog-stealing (for the second offence*). (8 & 9 Vict. c. 47, s. 2 in part.)

LIV. *Forfeiture* of goods and chattels, real and personal,† and if the offender have not goods and chattels to the value of 20*l.*, then, in addition, imprisonment for one year.

1. Maintaining the authority, spiritual or ecclesiastical, of any foreign prince or state claimed within this realm or any of the dominions under the queen's obeisance before the passing of the 1 Eliz. c. 1.‡ (1 Eliz. c. 1, ss. 27 and 28; 7 & 8 Vict. c. 102.)

LV. *Imprisonment* for any term not exceeding one year, with or without hard labour or solitary confinement, or with both.

* The first offence is punishable on summary conviction before two or more justices with imprisonment not exceeding six calendar months, with or without hard labour, or with forfeiture not exceeding 20*l.* over and above the value of the dog, as to the justices shall seem meet.

† This forfeiture, being by statute, does not, as above observed, constitute the offence a felony.

‡ The repeal of this offence is recommended by the Commissioners for revising and consolidating the Criminal Law. (See their Report on penalties and disabilities in regard to religious opinions, dated 30th May, 1845.)

1. Uttering counterfeit coin intended to pass for the queen's current copper coin, or being possessed of three or more pieces of such coin with intent to utter the same. (2 Wm. IV. c. 34, ss. 12 and 19.)

LVI. *Imprisonment* for any term not exceeding one year, or fine, or both.

1. Maliciously publishing defamatory libels. (6 & 7 Vict. c. 96, s. 5.)

LVII. *Solitary imprisonment* for a space not exceeding twelve nor less than three calendar months.*

1. Persons having hired stocking-frames, unlawfully disposing of them without the consent of the owners. (28 Geo. III. c. 55, s. 2.)

2. Knowingly receiving or purchasing such stocking-frames so unlawfully disposed of. (28 Geo. III. c. 55, s. 3.)

LVIII. *Fine* of 100*l.* or imprisonment with hard labour for any term not exceeding one year, at the discretion of the court.

1. Making signals between sunset and sunrise from the 21st of September to the 1st of April, and between 8 p.m. and 6 a.m. at any other time of the year, for the purpose of giving any notice to persons on board smuggling vessels, whether such persons be or be not within distance to notice such signals. (8 & 9 Vict. c. 87, s. 60.)

LIX. *Fine* of 500*l.*, and the offender to be rendered incapable of holding any office or place under the crown.

1. Judges and other officers or persons demanding or taking any money or other thing of value for anything done or pretended to be done under any Act relating to bankrupts, beyond what is allowed by such Acts. (1 & 2 Wm. IV. c. 56, s. 58.)

2. Masters in Chancery, or persons holding offices in the Court of Chancery, or under any of the officers thereof, demanding or taking any emolument or other thing of value, other than is allowed to be taken for anything done or pretended to be done relating to their offices or employments.* (3 & 4 Wm. IV. c. 94, s. 41.)

LX. *Imprisonment* for six months.

1. Mayors, bailiffs, or other chief officers of towns corporate, designedly hindering the election of other mayors, &c. in the same towns corporate.† (11 Geo. I. c. 4, s. 6.)

2. Brokers, not being trading goldsmiths or refiners of silver, buying or selling bullion or molten silver. (6 & 7 Wm. III. c. 17, s. 7.)

3. Persons suspected of buying or selling unlawful bullion, in whose possession such bullion shall be found, not proving upon their trial for melting the current coin of the realm, by one witness at the least, that the same was lawful silver and not current coin, nor clippings thereof. (6 & 7 Wm. III. c. 17, s. 8 in part.)

LXI. *Half a year's* imprisonment, and ransom at the queen's will‡.

1. Marshals of the Queen's Bench suffering prisoners indicted for felony who have removed the same indictment before the queen to wander out of prison by bail or without. (5 Edw. III. c. 8.)

LXII. *Imprisonment* for any period not exceeding six months, and the offender, if a male, may be put to hard labour, or be once, twice or thrice privately whipped, in such manner as the court shall direct.

1. Maliciously damaging any thing kept for the purposes of art, science, or literature, or as an object of curiosity, in any museum or other repository, which is at all times or from time to time open to the public or any considerable number of persons, either by permission of the proprietor or by payment of money, or any picture, statue, monument or painted glass in any place of public worship, or any statue or monument exposed to public view. (8 & 9 Vict. c. 44, s. 1.)

LXIII. *Imprisonment* for any time not exceeding six calendar months.

1. Making false declarations under the provisions of the Act for regulating the

* But see 7 Wm. IV. & 1 Vict. c. 90, s. 5, which limits the time for which the court may order solitary confinement to a period not longer than one month at a time, or three months in a year. It may be a question whether the above punishment is affected by that enactment, being expressly directed by act of parliament, and the court having no discretion.

* In the case of officers of the Court of Chancery, the statute also provides that they are to be removed from their offices or employments.

† Such offenders are also disabled to hold any office belonging to the same corporations.

‡ For the meaning of ransom and queen's will, see above, p. 208, notes * †.

manner of making surcharges of the duties of assessed taxes.* (50 Geo. III. c. 105, s. 9.)

LXIV. *Fine* not exceeding 100*l.* and three months' imprisonment.

1. Procuring the consent of more than twenty persons to any petition or other address to the queen or either house of parliament, for alteration of matters established by law in church or state, without the previous order of three or more justices, or the majority of the grand jury of the county, where the matter arises at the assizes or quarter-sessions, or, if arising in London, of the lord mayor, aldermen, and commons, in common council assembled; or, upon pretence of presenting any petition or other address, being accompanied with excessive number of people, or at any one time with above ten persons.† (13 Car. II. c. 5, s. 2.)

LXV. *Fine* not exceeding 20*l.*, or imprisonment with or without hard labour or solitary confinement, or with both, for any term not exceeding three calendar months, or both.

1. Unlawfully dredging for oysters. (7 & 8 Geo. IV. c. 29, ss. 4 and 36.)

LXVI. *Imprisonment* for any term not exceeding three months, or fine not exceeding 50*l.*

1. Offending against the provisions of the Act for regulating schools of anatomy. (2 & 3 Wm. IV. c. 75, s. 18.)

LXVII. *Fine* not less than 20*l.*, and imprisonment with or without hard labour.

1. Neglecting or disobeying the orders of the Poor Law Commissioners or assistant commissioners, having been twice previously convicted of so doing.‡ (4 & 5 Wm. IV. c. 76, s. 98.)

LXVIII. *Imprisonment* until the offender brings into court him which was the first author of the tale, and, if he cannot find him, such punishment as the council shall advise.

1. Scandalum magnatum. (3 Edw. I. c. 34; 2 Rich. II. st. 1, c. 5; 12 Rich. II. c. 11.)

LXIX. *Forfeiture* of 100*l.*

1. Members of incorporated commercial or trading companies against which a fiat in bankruptcy has issued (not being the persons ordered to prepare the balance sheet), or any other person, wilfully concealing the estate of such companies.* (7 & 8 Vict. c. 111, s. 17.)

LXX. *Fine* of 40*l.*

1. Disturbing any religious assembly allowed by law. (1 Wm. & Mary, c. 18, s. 18; 31 Geo. III. c. 32, s. 10;† 52 Geo. III. c. 155, s. 12.)

LXXI. *Fine* or imprisonment.

1. Embracery. (6 Geo. IV. c. 50, s. 61.)

LXXII. *Fine* according to the trespass.

1. Illegal distresses. (52 Henry III. cc. 1, 2, 3, 4; 3 Edw. I. c. 16.)

LXXIII. *Fine* and ransom at the queen's will and pleasure.‡

1. Judges or clerks rasing rolls, changing verdicts, &c. whereby ensueth disherison of any of the parties.§ (8 Rich. II. c. 4.)

2. Frauds by persons holding commissions to compound for the payment of first-fruits.‖ (26 Hen. VIII. c. 3, s 4; 1 Eliz. c. 4, s. 24.)

LXXIV. *Grievous fine* to the queen.

1. Not being ready and apparelled at the summons of sheriffs and the cry of the country, to arrest felons, when need is, as well within franchise as without.¶ (3 Edw. I. c. 9.)

* Besides the above punishment, the offender is also to be fined any sum not exceeding treble the amount of duty for which he shall have been charged, as the court shall order. (sec. 9.)

† Lord Mansfield declared it to be the unanimous opinion of the court, that neither the Bill of Rights (1 Wm. & Mary, sess. 2, c. 2) nor any other Act had repealed 13 Car. II. c. 5, and that it was in full force.—R. *v* Lord G. Gordon, Dougl., 571.

‡ The first and second offences are punishable on summary conviction only.

* Such offenders also forfeit double the value of the estate concealed.

† The punishment by 1 Wm. & Mary, c. 18, s. 18 (the Dissenters' Toleration Act), and 31 Geo. III. c. 32, s. 10 (the R. Catholic Toleration Act), was 20*l* only. As regards the former there is no doubt that 52 Geo. III. c. 155, which was passed for the relief of Protestant Dissenters, has superseded it; but it may be a question whether, notwithstanding the generality of its terms, it has superseded the provision of 31 Geo. III. c. 32, s. 10.

‡ For the meaning of ransom and queen's will and pleasure, see p. 208, notes * †

§ The offender must also satisfy the party.

‖ The offender also forfeits his office of deputation.

¶ If default be found in the lord of the franchise, the queen may seize his franchise.

LXXV. *Grievous punishment.*

1. Justices' marshals taking money wrongfully from successful suitors or jurors, prisoners or others attached upon pleas of the crown.* (3 Edw. I. c. 30.)

LXXVI. *Punishment* at the queen's will.†

1. Extortion by sheriffs and other queen's officers. (3 Edw. I. c. 26; 1 Hen. IV. c. 11.)

LXXVII. *Fine* not exceeding 100*l.*, at the discretion of the court.

1. Offences against the act for abolishing the truck system in certain trades. (1 & 2 Wm. IV. c. 37, s. 9.)

LXXVIII. *To be* at the queen's will of body, lands, and goods, thereof to be done as shall please her.

1. Justices being found in default in any of the points contained in the oath required to be taken by them. (18 Edw. III. st. 4; 20 Edw. III. c. 1.)

LXXIX. *Forfeiture* of twenty shillings for every offence.

1. Drovers, horse-coursers, waggoners, butchers, higglers or their servants, travelling or coming into their inns or lodgings upon the Lord's Day.‡ (29 Car. II. c. 7, s. 2.)

LXXX. *Forfeiture* of 5*s.*

1. Persons of the age of fourteen or upwards, doing or exercising any worldly labour, business or work of their ordinary calling on the Lord's Day (works of necessity and charity only excepted).§ (29 Car. II. c. 7, s. 1.)‖

Besides the misdemeanors above enumerated, there are several offences against the Church which are indictable, but the penalties for which may be relieved against by complying with the Toleration Acts, or have been abolished by 9 & 10 Vict. c. 59. These offences consist of

1. The forbearing to resort to one's parish church on Sundays or other holy days, without some lawful or reasonable excuse for being absent, which constitutes the offender on conviction a recusant convict, and renders him liable to forfeit 12*d.* for every such offence, to the use of the poor of the parish where the offence is committed (1 Eliz. c. 2, s. 14), and, in addition thereto, to pay into the Exchequer after the rate of 20*l.* for every month which shall be contained in the indictment upon which he is convicted; and also, having been once convicted, to forfeit without further indictment or conviction 20*l.* to the queen for every month of so forbearing (29 Eliz. c. 6, s. 4; 3 Jac. I. c. 4, s. 8). He also, previously to the passing of the 7 & 8 Vict. c. 102, which repealed the Acts imposing them, became liable to numerous disabilities, amounting, in effect, to outlawry. A Roman Catholic who so forbore to resort to his parish church became on conviction a Popish recusant convict, and liable to additional penalties and disabilities beyond those which attached to recusants convict. The offence has, however, been repealed by the before-mentioned Act of the 7 & 8 Vict. c. 102, as regards Roman Catholics.

2. The relieving, harbouring or keeping recusants in the house, the penalty for every month of doing which is 10*l.* (3 Jac. I. c. 4, ss. 32 and 33.) The 7 & 8 Vict. c. 102, also repealed this offence so far as it related to Popish recusants.

3. Schoolmasters teaching in private families without licence from their archbishop, &c., and before subscribing a declaration of their conformity to the Liturgy; for doing which they are liable, for the first offence, to suffer three months' imprisonment, and for every second and other offence the like imprisonment, and to forfeit 5*l.* to the queen. (13 & 14 Car. II. c. 4, ss. 11 and 12, 1 Wm. & Mary, sess. 1, c. 8, s. 11.)

* Such offenders are also to pay to the complainants treble the value of what they so receive.

† For the meaning of queen's will, see note †, p. 208.

‡ The above offence does not apply to the drivers of fish-carriages or of horses returning from drawing fish-carriages, used for the conveyance of fish under the provisions of 2 Geo. III. c. 15, an Act for the better supplying the cities of London and Westminster with fish. (See section 7 of that Act.)

Persons committing this and the next offence may be proceeded against either by indictment or in a summary way before a magistrate.

§ As to other exceptions see 29 Car. II. c. 7, s. 3; 10 & 11 Wm. III. c. 24, s. 14; 3 Geo. IV. c. 106, s. 16; 6 & 7 Wm. IV. c. 37, s. 14; 7 & 8 Geo. IV. c. 75, ss. 42-50; 1 & 2 Wm. IV. c. 22, s. 37.

‖ By the same section of 29 Car. II. c. 7, persons also who publicly cry or expose to sale any wares or chattels on the Lord's Day, are to forfeit the same.

4. Popish bishops, priests, or Jesuits, saying mass or exercising any other of their functions within the queen's dominions, or Papists keeping school or educating youth within the same, whereby, upon conviction, they become liable to perpetual imprisonment. (11 & 12 Wm. III. c. 4, s. 3.) Roman Catholics were also liable to many other severe penalties for promoting or exercising their religion, until these were repealed by the 7 & 8 Vict. c. 102. It will be seen that the two former of the above offences no longer apply to Roman Catholics. The two latter are, however, still in force with respect to them as well as all other classes of the queen's subjects.

The offence of forbearing to resort to church is repealed by the Protestant Dissenters' Toleration Acts (1 Wm. & Mary, sess. 1, c. 18, ss. 13 and 16; and 52 Geo. III. c. 155, ss. 4 and 14) in favour of Dissenters who go to some congregation for religious worship of Protestants allowed by law. Quakers, however, must also, in addition, make the declaration of fidelity, as it is called, and subscribe a profession of their Christian belief. By the provisions of the same Acts, the offence of relieving, harbouring or keeping recusants is repealed in favour of Quakers who make the declaration and subscribe the profession before alluded to, and of all other Protestant Dissenters who resort to some congregation for religious worship of Protestants allowed by law, or take the oaths of allegiance and supremacy, or (since the passing of the 3 & 4 Wm. IV. cc. 49 and 82, in case such Dissenters be Moravians, or Separatists) make an affirmation to the effect of such oaths. The penalties imposed upon schoolmasters teaching without licence from the archbishop, &c. are repealed in favour of Protestant Dissenters who take the oaths of allegiance and supremacy (or, if Moravians, or Separatists, make a declaration to the effect thereof, or, if Quakers, make the declaration of fidelity and profession of their Christian belief before alluded to), and make a declaration that they are Protestants, and that they believe in the Scriptures as received among Protestant churches. (1 Wm. and Mary, sess. 1, c. 18, s. 13; 8 Geo. I. c. 6; 19 Geo. III. c. 44, s. 2; 10 Geo. IV. c. 7, s. 1; 3 & 4 Wm. IV. cc. 49 and 82.) Popish bishops &c. saying mass &c., and Papists keeping school or educating youth, are relieved from the penalties for so doing, provided they take the oath appointed by the Roman Catholic Relief Act (10 Geo. IV. c. 7). See the 31 Geo. III. c. 32, ss. 3, 4 and 13; 10 Geo. IV. c. 7, ss. 2 and 23; and 9 & 10 Vict. c. 59.

Persons committing any of the beforementioned offences against the Established Church, may also, in general, prevent the consequences of the commission of such offences by conforming themselves to the Church. Members of the Established Church are not within the Toleration Acts, and the only mode therefore in which they can escape the penalties for those offences is by conforming to the law. Neither do those Acts apply to Jews.

There are also two offences, having, however, much more of a political than of a religious character, which subject the persons committing them to be adjudged Popish recusants convict, and as such to forfeit and be proceeded against. These are, refusing to take the oaths of allegiance and abjuration, or to make the affirmations or declarations allowed by law in lieu thereof, when tendered by two justices of the peace or other authorized persons (1 Geo. I. st. 2, c. 13, s. 10; 8 Geo I. c. 6; 6 Geo. III. c. 53; 3 & 4 Wm. IV. cc. 49 and 82; 1 & 2 Vict. c. 77); and peers or members of either House of Parliament, sitting or voting therein, or coming into the queen's presence, before they have taken the oaths of allegiance and supremacy, or taken or made the oath, affirmations or declarations allowed by law in lieu thereof. (30 Chas. II. st. 2, ss. 2, 5, and 6; 8 Geo. I. c. 6; 31 Geo. III. c. 32, s. 20; 10 Geo. IV. c. 7, ss. 2, 4 and 23; 3 & 4 Wm. IV. cc. 49 and 82; 1 & 2 Vict. c. 77.) Peers and Members of Parliament are also liable in respect of the latter offence to many disabilities, and to a fine of 500*l.* in addition to the penalties consequent on being adjudged Popish recusants convict. The repeal of the four first-mentioned offences relating to the Established Church, is recommended by the Commissioners for revising and consolidating the

criminal law. (See their Report on penalties and disabilities in regard to religious opinions, dated 30th of May, 1845.) The Commissioners also recommend that persons committing the two last-mentioned offences should no longer be adjudged and suffer as Popish recusants convict, but should be punished in a more direct manner; and that one form of an oath, and one of an affirmation, should be substituted for the numerous forms of the oaths of allegiance, supremacy and abjuration, and the modifications thereof now existing, to be so framed that the same may be taken by all classes of her Majesty's subjects without objection on religious grounds.

The whole of the law, written as well as unwritten, relating to the definition and punishment of the above offences, that is, the whole Criminal Law of England as regards indictable crimes and their punishments, has been collected and reduced into one body by the Criminal Law Commissioners (see their 7th Report), and is thus for the first time rendered accessible to the public at large. Before this reduction the Criminal Law had to be sought for in an immense mass of statutes, reported decisions, records, ancient and modern, and text-books; and, on that account, could be known but to the few, and those principally engaged in the practice or administration of the law. The digest so prepared by the Commissioners, and called by them 'The Act of Crimes and Punishments,' is comprised in twenty-four chapters, under the following heads:—

1. Preliminary Declarations and Enactments.
2. Treason and other Offences against the State.
3. Offences against Religion and the Established Church.
4. Offences against the Executive Power, generally.
5. Offences against the Administration of Justice.
6. Offences against the Public Peace.
7. Offences relating to the Coin, and to Bullion, and Gold and Silver Plate.
8. Offences relating to the Public Property, Revenue and Funds.
9. Offences against the Law of Marriage.
10. Offences relating to Public Records and Registers.
11. Offences against Public Morals and Decency.
12. Offences against Public Health.
13. Common Nuisances.
14. Offences relating to Trade, Commerce, and Public Communication.
15. Homicide and other offences against the person.
16. Libel.
17. Offences against the Habitation.
18. Fraudulent Appropriations.
19. Piracy and Offences connected with the Slave Trade.
20. Malicious Injuries to Property.
21. Forgery and other offences connected therewith.
22. Illegal Solicitations, Conspiracies, Attempts and Repetitions of Offences.
23. Definitions of Terms and Explanations.
24. Chapter of Penalties.

Upon the subject of punishments, the Commissioners recommend the abolition of forfeiture as an incident to convictions for treason or felony; are inclined to reject whipping as a mode of punishment, except in the case of discharging or aiming fire-arms, &c. at the queen (5 & 6 Vict. c. 51, s. 2), in which it has lately been imposed by the legislature as constituting a signal mark of ignominy; propose that three, or at the utmost four, years should be the longest term of imprisonment to be inflicted for any offence, whether treason, felony, or misdemeanor, in cases where imprisonment forms the whole or part of the punishment; and suggest a scale of penalties, consisting of forty-five classes, to be substituted for the numerous punishments contained in the above statement.—This scale might be much further reduced but for the special nature of some offences, and if the recommendations of the Commissioners should be adopted. At present it is extremely difficult in some instances to determine what punishment an offence is liable to.

It may be expected that at no distant period the 'Act of Crimes and Punishments,' subject to such omissions as are recommended by the Commissioners, will

become the law of the land. A bill embodying its provisions was introduced in 1844 in the House of Lords by Lord Brougham, was read a second time, and went into committee *pro formâ;* but was ultimately withdrawn at the instance of the Lord Chancellor, who undertook to issue a commission for the purpose of revising it, that duty being too laborious for any government to grapple with, and if their report should be favourable to its adoption, to found one or more government measures upon it, as should be thought most expedient. A commission (the one whose Report on penalties and disabilities in regard to religious opinions has been several times alluded to in the foregoing statement) was accordingly appointed for this, amongst various other purposes, on the 22nd of February, 1845. Since then, the members of the old commission (who also form part of the new one) have made a Report containing a digest of the law of procedure as regards indictable offences, (a most difficult and laborious undertaking,) and this also is to be revised by the new commission, and if passed into a law would be a work of inestimable value.

Besides the 'Act of Crimes and Punishments' and the Digest of the Law of Procedure, several other most important Reports emanated from the original Criminal Law Commission. It was upon their recommendation that the Acts of the 1st year of her present Majesty's reign, repealing the punishment of death in the case of between thirty and forty crimes, were founded. It was a Report of theirs which mainly contributed to the alteration of that harsh and inconsistent rule of our law which denied a prisoner his full defence by counsel upon a charge of felony. They also made a very elaborate and valuable Report upon the Consolidation of the General Statute Law, and a Report upon the subject of Juvenile Offenders—in all, the number of Reports which issued from the Commission between the period of its first appointment in 1823 and its termination in the year 1845, was Eight.

Procedure.

Where any of the before-mentioned crimes has been or is suspected to have been committed, the ordinary mode of bringing the accused to justice is as follows:—Unless he surrender himself, he is, in the first place, to be summoned by some magistrate, having jurisdiction, to appear before him, or, as is more generally the case, a warrant for his apprehension is to be procured from some such magistrate. In order to the issuing of a summons or warrant there must be an information laid on oath: the former may be directed either to the accused himself, or to some other person who is to summon him to appear; the latter to any constable or other person whom the magistrate pleases, and must signify the party to be arrested and the offence which is the cause of his arrest. After a summons duly issued and served upon the accused, he is to appear according to its directions, or in default the magistrate may issue his warrant to apprehend him. After a warrant duly granted, whether a summons has been previously issued or not, the person to whom it is directed is to proceed to arrest the accused (and if for treason, felony, or breach of the peace, may do so on any day, and at any time of the day or night), and to take him to gaol or before some magistrate having jurisdiction, according to the import of the warrant, and that without any unnecessary delay. It is also lawful for a constable or private person who sees a felony committed, or attempted to be committed, or a dangerous wound given, to arrest the offender, without warrant; also any person whom he reasonably suspects of having committed a felony which has actually been committed, and persons found committing thefts or malicious injuries to property and some other offences. A constable may also, without warrant, arrest on a reasonable charge made of a felony committed or dangerous wound given, although it afterwards appear that none such had been actually committed or given; also for a breach of the peace committed in his view; but (except in the case of one of the metropolitan police, who may under certain circumstances do so upon a charge made of an aggravated assault (see 2 & 3 Vict. c. 47), not for

one committed out of his view. Justices of the peace, sheriffs, coroners, and all other peace officers, have, it would appear, the like power to arrest as constables. Where a party is arrested without warrant, he must be taken before a magistrate within a reasonable time.

On surrendering himself, or appearing in obedience to a summons, or being brought before a justice of the peace under a warrant, the justice is to proceed to take the examination of the accused and the information on oath of those who know the facts and circumstances of the case, and is to put so much thereof as is material into writing. If a *primâ facie* case be made out, the justice is to commit him to prison (unless he be entitled to be discharged on bail). If it appear that no crime has been committed, or that, if committed, the accused is innocent, he is to discharge him. Unless it be prohibited by act of parliament, the accused ought to be admitted to bail in the case of all misdemeanors. Where the charge is one of felony, and the accused is brought before a single justice of the peace, if the evidence be neither sufficient to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, the accused is to be detained until the case be taken before two justices at the least, who in such case may admit him to bail (7 Geo. IV. c. 64, s. 1), and, if one of them has signed the warrant of commitment, may admit him to bail, although he confess the matter laid to his charge, or such charge do not appear to be groundless, or the circumstances be such as to raise a presumption of guilt (5 & 6 Wm. IV. c. 33, s. 3). If the accused be brought before two justices in the first instance, they have the like power to bail him. Where a party is committed or bailed for any offence, the justice may bind by recognizance all persons who know or declare anything material touching it, to appear and prosecute, or give evidence against him. When held to bail or committed to prison, the accused is entitled to have delivered to him, on demand, copies of the examinations of the witnesses upon whose depositions he is so bailed or committed, on payment of a reasonable sum not exceeding 1½*d.* for each folio of 90 words. If, however, such demand be not made before the day appointed for the commencement of the assizes or sessions at which the accused is to be tried, he is not entitled to such copies unless the court be of opinion that the same may be delivered without delay or inconvenience to the trial (6 & 7 Wm. IV. c. 114, s. 3).

Before a prisoner can be put upon his trial for any treason or felony, it is necessary that a bill of indictment should be found against him by a grand jury duly returned before some court which has jurisdiction to try parties for crimes by means of a petty jury; or in the case of murder or manslaughter, he may be tried upon the coroner's inquisition. Where the offence with which he is charged is a misdemeanor, he may be tried either upon a bill of indictment found, as in the case of treason or felony, or upon a criminal information filed against him in the name of the queen. For a præmunire, he is to be first indicted as in other cases, or may be proceeded against in the peculiar manner pointed out by 16 Rich. II. c. 5, commonly called the Statute of Præmunire. This latter mode may, however be regarded as obsolete.

A bill of indictment is an accusation at the suit of the Crown, and being for the public benefit and security, may generally be preferred by any person; but it is not usual for parties to interfere unless they are individually aggrieved by the offence, or fill some office which renders it peculiarly incumbent on them to bring the offender to justice. [INDICTMENT.] So soon as the grand jury have presented the bill of indictment in court, indorsed "a true bill," the indictment is complete. If the grand jury find no true bill, the accused, where in custody, is to be at once set at large, without the payment of any fees on account of such discharge (14 Geo. III. c. 20; 55 Geo. III. c. 50; 8 & 9 Vict. c. 114). An indictment may also be framed upon the presentment by a grand jury, of their own knowledge that an offence has been committed; but this mode of prosecution is seldom adopted. For further particulars relating to Grand Juries see JURY.

A criminal information in the name of the Queen is a suggestion filed on record

by the attorney-general or by the queen's coroner or master of the Crown Office, in the court of Queen's Bench, that a misdemeanor has been committed by an alleged offender. The attorney-general, or, during vacancy in that office, the solicitor-general, may at his discretion file a criminal information. In all other cases it is in the discretion of the court of Queen's Bench to grant or refuse leave to file such informations, and such leave will only be granted on motion made, grounded on proper affidavits, and in respect of misdemeanors of such magnitude or under such circumstances as in the opinion of the court call for its interference. After an information is filed, all the subsequent proceedings are in general the same as after an indictment found for a misdemeanor.

Persons committed for treason or felony who move in open court the first week of the term, or first day of the sessions of oyer and terminer or gaol delivery, to be brought to trial, may, if not indicted some time in the next term or session after their commitment, be bailed by the judges of the Queen's Bench or justices of oyer and terminer or gaol delivery, unless it appear that the witnesses for the Crown could not be produced the same term or sessions; and if not indicted and tried the second term or sessions after their commitment, or if acquitted upon their trial, shall be discharged from imprisonment (31 Car. II. c. 2, s. 7). [HABEAS CORPUS ACT.]

When the indictment is found, in cases of felony, the accused is bound to plead and try *instanter*, and, if in custody, is to be brought to the bar and arraigned (which is the legal term for calling on a prisoner to answer to a charge of an indictable offence) as soon as convenient after such indictment is found; but in all cases of treason, except where the overt act is the assassination of the queen, the endangering of her life or person, or any attempt to injure her person (39 & 40 Geo. III. c. 93; 5 & 6 Vict. c. 51), and except the forgery of the great and other royal seals (7 & 8 Wm. III. c. 3. s. 13), the accused is to have a true copy of the indictment delivered to him *ten days at the* least before he is arraigned, and, *at the same time*, a list of the witnesses to be produced against him, and if indicted in any other court than the Queen's Bench, a list of the petit jury; but if indicted in the Queen's Bench, the list of the petit jury may be delivered to him at any time after his arraignment, so as it be delivered ten days before the day of trial (7 & 8 Wm. III. c. 3, s. 1; 7 Anne, c. 21, s. 11; 6 Geo. IV. c. 50, s. 21). If the accused plead, however, without claiming or having had delivered to him such copy or lists, he will be considered to have waived any objection on account of such non-delivery. In cases of misdemeanor, the accused is not bound to plead and try at the session at which the indictment is found, unless he has been in custody or out on bail to appear to answer for the offence with which he is charged, twenty days, at the least, before such session (60 Geo. III. & 1 Geo. IV. c. 4, s. 3), but may traverse the indictment, that is, postpone its determination to the next session. He must usually, however, before he will be allowed to do so, appear personally in court (except in the Queen's Bench, where he may appear by attorney) and plead. A party indicted for a misdemeanor, not having been in custody nor out on bail, twenty days before the session at which he is so indicted, may also, at the subsequent session, traverse to the one following, unless he has been in custody or out on bail or has received notice of such indictment, twenty days before such subsequent session (60 Geo. III. & 1 Geo. IV. c. 4, s. 5). If the accused, whether in case of felony or misdemeanor, be not in custody nor on bail when the indictment is found, or, being on bail, make default, his appearance may be compelled by process or by a bench warrant; and he may be prosecuted to outlawry. [OUTLAWRY.] No fee is to be demanded or taken from persons charged with or indicted for felony or misdemeanor, or as an accessory to felony, for their appearance to the indictment or information, or for allowing them to plead, or for recording their appearance or plea, or for discharging any recognizance taken from such persons, or any sureties for them (8 & 9 Vict. c. 114, s. 1.)

In cases of treason, the accused is en-

titled, on application to the court, to have two counsel assigned him, who may have free access to him at all seasonable hours (7 & 8 Wm. III. c. 3, s. 1). The court may also, if it think fit, upon the accused's making affidavit that he is not worth 5*l.* beyond his wearing apparel, allow him to defend *in formâ pauperis;* in which case neither the officers of the court, nor those who are assigned to conduct his cause, may take any fees.

The prisoner, upon being arraigned or charged with the indictment, in cases of felony or misdemeanor, may either confess the charge to be true, in which event such confession is to be recorded and judgment awarded according to law, or may plead to the indictment or demur. By pleading, he puts in issue the facts of the charge; by demurring, he admits the facts, but contends that they amount to no offence indictable by law; as if a man were indicted for feloniously stealing game, without alleging that it was tame or confined; in which case, upon demurrer, he must be discharged. After demurrer, in cases of felony, decided against the prisoner, he is at liberty to plead over "not guilty;" but, in cases of misdemeanor, the judgment for the Crown is final, for it operates as if the prisoner had been convicted by a jury. In either case, if the demurrer be decided for the prisoner, the judgment is that he be dismissed and discharged.

The pleas which may be pleaded by a prisoner are either to the jurisdiction of the court, and these must be pleaded before any other plea, or in abatement (for the omission of his addition under the statute of additions, or for misnaming him) or in bar; and pleas in bar are either special pleas or the general issue. Special pleas may allege a previous acquittal, conviction or attainder of the same offence, or a pardon [PARDON]; and, in the case of prosecutions for the non-repair of highways or bridges, the liability, if denied by the defendant, of the party who is liable for the repair of the same.

The general issue, or "Not Guilty," which is the plea employed in the infinitely greatest number of cases, puts in issue the whole question of the accused's guilt or innocence of the charge in all its bearings; and not only casts on the prosecutor the burden of making out every part of his charge, but entitles the accused to give in evidence every possible ground of justification or excuse which can form an answer to the indictment.

No advantage can now be obtained by a plea in abatement, as by the 7 Geo. IV. c. 64, s. 19, the court may, upon such plea, immediately cause the indictment to be amended, and call upon the party to plead to it so amended, as if no such plea had been pleaded. In cases of felony, if a special plea be found for the Crown, the prisoner may plead over "Not Guilty;" but, in cases of misdemeanor, the judgment for the Crown is final. In either case, if it be found for the prisoner, he is to be dismissed.

If, instead of pleading, the prisoner stand mute of malice, or will not answer directly to the indictment, the court may order a plea of "Not guilty" to be entered on his behalf, and such plea will have the same effect as if it had been actually pleaded by him (7 & 8 Geo. IV. c. 28, s. 2). But if a doubt arise whether he be mute of malice or dumb, a jury is to be impannelled to try the fact, and, if the latter be found, the court will use means to make the prisoner understand what is required of him; but if this be impossible, will direct a plea of "Not guilty" to be entered and the trial to proceed. Should he upon arraignment be found to be insane by a jury impannelled for the purpose, under the provisions of the 39 & 40 Geo. III. c. 94, so that he cannot be tried, the court may order such finding to be recorded and the prisoner to be kept in strict custody until her Majesty's pleasure be known.

When, however, the plea of "Not guilty" has been pleaded, the trial is to be had before some court having jurisdiction, by twelve jurors, generally of the county where the fact is alleged in the indictment to have been committed, called a petit jury, by way of distinction from the grand jury. The ordinary courts having jurisdiction to try indictable offences are the Queen's Bench, Courts of Oyer and Terminer, Gaol Delivery, and Quarter-Sessions, Borough Courts and the superior Criminal Courts of the Counties

Palatine; but Courts of Quarter-Sessions and Borough Courts have no jurisdiction with respect to treason or any felony punishable with death or transportation for life, and several other offences (see 5 & 6 Vict. c. 38, s. 1). The trial is generally to be had in the county or district in which the offence was committed.

Upon the trial being called on, the jurors are to be sworn as they appear, to the number of twelve, unless they be challenged. As to challenges, whether on the part of the Crown or the prisoner, and as to petit jurors generally, see JURY. It may here be observed, however, that the right of peremptory challenge, *i. e.* of challenging at mere pleasure, without showing any cause, which exists in cases of treason and felony, is one of the peculiarities before alluded to, which distinguish those classes of crimes from misdemeanors; and that the power to challenge peremptorily to the number of thirty-five jurors in cases of treason, and to the number of twenty only in cases of felony, is a distinguishing feature between treasons and felonies. When twelve jurors are procured free from exception, and have been sworn, or, if Quakers, Moravians, or Separatists, or persons who have been Quakers or Moravians, have made their solemn affirmation, in case of treason or felony, well and truly to try and true deliverance make between the queen and the prisoner whom they have in charge, and in cases of misdemeanor well and truly to try the issues joined between the queen and the defendant, the case, where counsel is retained for the prosecution, is to be opened by him, or if two or more counsel are retained, by the leading one, according to his instructions, unless the case is so plain as not to require any statement. The counsel for the prosecution ought, however, to confine himself so far as possible to a simple statement of the facts which he expects to prove, and to abstain from any appeal to the passions of the jury, more particularly in cases where the prisoner has no counsel. After the opening, or where no counsel is engaged for the prosecution, immediately after the swearing of the jury, the examination of the witnesses on behalf of the Crown commences. Before being examined an oath or affirmation is administered to each witness "that he will true answer make to such questions as the court shall demand of him, and will tell the truth, the whole truth, and nothing but the truth." Where there is counsel he examines the witnesses; where there is none that duty devolves on the court. In criminal cases a single witness, swearing to the actual offence or to such facts as necessarily lead to the inference that it has been committed, if believed by the jury, is generally sufficient to substantiate the charge. In treason, perjury, and the offences of tumultuously petitioning, affirming that parliament has a legislative authority without the Crown, or that any person is entitled to the crown contrary to the Act of Settlement, and Blasphemy under the provisions of 9 & 10 Wm. III. c. 32, however, there must be two witnesses. In all cases, also, the prisoner's confession, if made in consequence of a charge against him, and in a direct and positive manner, voluntarily and without promise or threat operating on his mind at the time of making it, is sufficient, even if there be no other proof that the crime with which he is charged has been committed, for the jury to convict upon, if they believe it to be true. And the single unsupported testimony of an accomplice is sufficient (except where two witnesses are required), if the jury believe his story; but it is usual in such cases for the court to direct the acquittal of the prisoner. If, however, the accomplice be corroborated by unsuspicious evidence as to such parts of his testimony as show that his story has not been fabricated, the court will not interfere.

There are four kinds of proof by which criminal charges may be sustained: 1st, *positive*, as by the direct testimony of a witness who saw the fact; 2ndly, *circumstantial*, when a number of facts are presented which are inconsistent with any other hypothesis than that of the prisoner's guilt; 3rdly, *presumptive*, as when the possession of a stolen article casts on the prisoner the burden of showing how he obtained it; 4thly, *confessional*, where the prisoner makes a

ıtary admission of his guilt as dy mentioned. The general rules ·idence in criminal proceedings are ıme as those which are applicable in cases. [EVIDENCE.] A husband or however, may be a witness for and ıst each other upon a charge of ınal violence done by either to the n of the other, contrary to the rule ·il cases, which excludes the testi- · of husband and wife for or against other. The prosecutor also, not- ıtanding his connexion with the pro- ngs against the prisoner, is a com- t witness in support of the charge, ıch proceedings are carried on in the of the crown, and the prosecutor ıccording to legal construction, no t interest in the result.

ter the examination of each witness, ıay be cross-examined on behalf of risoner, who is entitled at the time of ·ial to inspect, without fee or reward, epositions, or copies thereof, which been taken against him and returned court. (6 & 7 Wm. IV. c. 114, When the cross-examination is ed, the counsel by whom the witness ·alled is entitled to re-examine him ıe purpose of explaining any matters ıed upon or referred to in the cross- ination, into which confusion may been introduced by the questions on risoner's behalf. The court may also ny questions it thinks proper to the sses, and for this purpose may recall ness at any stage of the inquiry.

hen the case for the prosecution is l, the prisoner or his counsel (who since the passing of the 6 & 7 IV. c. 114, the same right to ad- the jury on the merits of the in felony as he previously had eason and misdemeanor) is entitled dress the jury, and in so doing to ıent on the entire case for the pro- ıon; and if he intends to adduce nce, may open that evidence with particulars he may think proper. the prisoner or his counsel has ed his address, the witnesses for the ce are to be sworn, and their evi- gone into. The accused is always ed to call witnesses to speak to his *al* character, as being inconsistent with the imputed offence, and it is for the jury to estimate the value of such evidence.

When the prisoner's evidence is closed, witnesses may be called on behalf of the prosecution to give specific contradictions to the denials by the prisoner's witnesses on cross-examination, and generally to give any evidence in reply which is strictly applicable to the defence and which could form no part of the original case. Where such evidence is given, the prisoner or his counsel has a right to address the jury on it before the general reply for the prosecution.

When the defence is ended, the counsel for the prosecution, in all cases where witnesses have been called on behalf of the accused, is entitled to reply on the entire case and on all the observations made by the other side during its progress. After the case on both sides is closed, the court sums up the evidence, and in so doing directs the attention of the jury to the precise issue they have to try, and applies the evidence to that issue. Upon the trial of a person for a non-capital felony committed after a previous conviction for felony, the jury is not to be charged to inquire concerning such previous conviction, until they have inquired concerning such subsequent felony and have found such person guilty of the same; and where such previous conviction is stated in the indictment, the reading of such conviction to the jury is to be deferred until after such finding. Where, however, such person gives evidence of good character, the prosecutor may in answer thereto give evidence of such previous conviction, before such finding, and the jury may inquire concerning such previous conviction at the same time that they inquire concerning the subsequent felony. (6 & 7 Wm. IV. c. 111.) The summing up being concluded, the jury proceed to consider of their verdict. If, on consultation in the jury-box, they are not able to agree within a convenient time, they retire, and a bailiff is sworn to keep them together without meat, drink, fire, or candle till they are agreed. This rule, however, has been relaxed in modern times. In cases of misdemeanor, where the trial lasts more

than one day, the court will generally allow the jurors to return to their homes, the jury engaging to allow no one to speak to them on the subject of the trial. But in cases of treason or felony, the course has been to permit them to retire in a body to some tavern, where accommodation is provided for them by the sheriff and his officers, who are sworn to keep them together, and neither to speak to them themselves nor to suffer any other person to speak to them touching any matter relating to the trial.

When the jury have agreed upon their verdict, they signify that they are ready to deliver it; and on returning into court for that purpose, their names must be called over, and all twelve must be within hearing when it is given. The foreman of the jury is the person who is to deliver the verdict; and in cases of treason or felony, it can only be received in open court and in the presence of the prisoner: in cases of misdemeanor it may be otherwise. The verdict may be either "guilty" or "not guilty," or may be a special one; and may be "guilty" upon one count of an indictment, and "not guilty" upon others; or may be "guilty" as to part of a count, and "not guilty" as to the remainder, where an offence is charged which includes a lesser crime of the same degree, and the latter only is proved; as where murder is charged, and the proof is of manslaughter: and since the passing of 7 Wm. IV. & 1 Vict. c. 85, s. 11, before referred to, the jury may find guilty of an assault, where one is included in the felony charged, and acquit of the felony, although an assault is a misdemeanor only. A special verdict is the finding of all the facts specially, where the jury doubt whether they constitute the offence in the indictment, and leaves the court to give judgment according to the legal effect of the facts so found.

Where upon the trial evidence is given of insanity at the time of committing the offence charged, and the jury acquit, they are required to find specially whether the accused was insane at the time of the commission of the offence, and whether he was acquitted on that account; and if they find in the affirmative, the court is to order him to be detained till the queen's pleasure be known; and she may give such order for his safe custody during her pleasure as she may think fit. (39 & 40 Geo. III. c. 94, s. 1; 3 & 4 Vict. c. 54, s. 3.) On a verdict of acquittal, or where he is discharged by proclamation for want of prosecution, the prisoner is to be immediately set at large in open court, without the payment of any fees in respect of such discharge. (14 Geo. III. c. 20; 55 Geo. III. c. 50; 8 & 9 Vict, c. 114.)

When a verdict of guilty has been returned against a prisoner, the court, except in the case of prosecutions pending in the Queen's Bench, may proceed at once to pass sentence upon him, unless he allege some matter or thing sufficient in law to arrest or bar judgment. In prosecutions pending in the Queen's Bench, however, the prisoner is allowed four days for moving in arrest of judgment; or, in cases of misdemeanor, for a new trial or writ of *venire facias de novo.* Also where the trial at any sittings or assizes is upon a record of the Queen's Bench, the judge before whom the verdict is taken may, under 11 Geo. IV. & 1 Wm. IV. c. 70, s. 9 (except where the prosecution is by information filed by leave of the Queen's Bench, or such cases of information filed by the attorney-general wherein he prays that judgment may be postponed), pass sentence at once; but such sentence is not to have the force and effect of a judgment of that court until after the expiration of six days after the commencement of the ensuing term, during which period the prisoner may move for a new trial, or to have the judgment amended. Except in the last-mentioned case of a trial at the sittings or assizes upon a record of the Queen's Bench, or where the offence of which the prisoner is convicted is a misdemeanor punishable by a simple fine, or where the Queen's Bench, after conviction for misdemeanor, thinks proper to dispense with his attendance, sentence cannot be pronounced against a prisoner unless he be present in court at the time.

Judgment may be arrested where the offender has received a pardon since his arraignment or after conviction becomes

insane, or, having been out of custody since his conviction, denies that he is the person convicted (in which last case a jury is to be impannelled to try the fact), or for some defect apparent in any part of the record, as regards either the jurisdiction of the court, the statement of the offence or any of the proceedings thereon, but not for any of the mere technical defects specified in 7 Geo. IV. c. 64, ss. 20 and 21. If the judgment be arrested, all the proceedings againt him are to be set aside, and judgment of acquittal is to be pronounced in his favour; but he may be prosecuted again for the offence of which he is so acquitted.

A new trial may be had on the application of the defendant in all cases of misdemeanor pending in the Queen's Bench, where it appears to the court that the awarding one is essential to justice; as, for instance, where the verdict is contrary to evidence or the directions of the judge, or evidence has been improperly received or rejected at the trial. The court of Queen's Bench will also in its discretion, where a party is acquitted of a misdemeanor on a prosecution pending in that court, allow a new trial, on the application of the prosecutor, if such acquittal has been obtained by any fraudulent means or practice, as where the party acquitted has kept back any of the prosecutor's witnesses, or neglected to give due notice of trial.

A writ of *venire facias de novo*, the effect of which is the same as granting a new trial, may be awarded where, by reason of misconduct on the part of the jury, or of some uncertainty or ambiguity or other imperfection in their verdict, or of any other irregularity or defect in the proceedings or trial, appearing on the record, the proper effect of the first *venire* has been frustrated, or the verdict has become void in law.

Neither new trials nor writs of *venire facias de novo* are grantable in cases of treason or felony.

Where a new trial or writ of *venire facias de novo* is awarded, the parties stand in the state in which they were immediately before the first trial: the whole case is to be re-heard, and the first verdict cannot be used upon the new trial, or as evidence of any matter found by such verdict or in argument.

After sentence pronounced against an offender, the judgment of the court may be falsified or reversed, either by plea without writ of error or by writ of error: by the former, for some matter not apparent upon the face of the record, as want of authority in the court by whom the judgment was pronounced; by the latter, for the same matters as are sufficient to arrest a judgment, and also for any material defect in the judgment itself. Where the judgment has been pronounced by a court of oyer and terminer, gaol delivery, or quarter-sessions of the peace or of a county palatine, the writ of error is to be brought in the court of Queen's Bench, and for that purpose the indictment and other proceedings thereon must be removed into that court by writ of *certiorari* [CERTIORARI]: where it has been pronounced in the Queen's Bench, it is to be brought in the Exchequer Chamber, before the justices of the Common Pleas and barons of the Exchequer, from whose judgment a writ of error lies to the House of Lords. In cases of treason and felony it is in the discretion of the crown to grant or refuse a writ of error: in all other cases the fiat of the attorney-general must be first obtained, and this he ought to grant upon probable cause of error shown. When issued, the writ of error stays the execution of the judgment, where it has not been carried into effect during the time that such writ is pending, except that in cases of treason, or felony, the offender is not entitled to be liberated on bail. In cases of misdemeanor, however, where he is imprisoned under execution, or any fine has been levied, either in whole or in part in pursuance of the judgment, he is entitled to be discharged from imprisonment and to receive back any money levied on account of such fine, until the final determination of the Writ of Error (8 & 9 Vict. c. 68, s. 1). If the judgment be falsified or reversed, such judgment and the execution thereupon, and all former proceedings, become thereby absolutely null and void; and the person the judgment against whom is so falsified or reversed, if living, and, if dead, his heir

or executor, is restored to all things which such person may have lost by such judgment and other proceedings, and stands in every respect as if such person had never been charged with the offence in respect of which such judgment was pronounced against him. If, however, the execution only be erroneous, that only will be reversed; and if the judgment be reversed for some technical error merely, in the indictment or subsequent process, the party may be prosecuted again. If the judgment be confirmed, the prisoner is to be remanded to undergo the remainder of his sentence.

Where there is nothing to arrest or bar a judgment, the execution of it may be prevented by a pardon received after sentence pronounced; but, without express words of restitution, no property which the offender forfeited on his conviction or attainder, is thereby revested in him; nor, unless where the pardon is by act of parliament, is the corruption of his blood removed, except as regards those of his blood born after the granting of such pardon, nor are any of the consequences of such previous corruption prevented.

In capital cases the execution of a judgment may also be suspended by a reprieve, either at the discretion of the Crown, or, where substantial justice requires it, of the court. There are two instances however in which the court is bound to grant a reprieve, viz.: 1, where the offender, if a female, is pregnant; 2, where the offender becomes insane after judgment. If the offender allege that she is pregnant or the court have reason to suppose that she is so, a jury of twelve matrons is to be impannelled with all possible dispatch to try whether or not she be quick with child. In case they find in the affirmative, the court respites the offender from time to time until she be delivered of a child or it is no longer possible in the course of nature that she should be so. After her delivery or where such delivery is no longer possible as before mentioned, or if the jury find that she is not quick with child, the court at the expiration of the period for which it has respited her, proceeds to award execution against her.

Where insanity is alleged, the court will reprieve the prisoner, if found to be insane by means of an *ex officio* inquiry, or if his insanity otherwise sufficiently appear.

Should the execution of a judgment be neither prevented nor suspended, or having been suspended, should have ceased to be so, such judgment is to be executed according to law by the sheriff or other authorised person or his deputy. In capital cases, if the offender, after hanging, be taken down before he be dead, he is to be hanged again until he be dead.

As regards the manner in which the various judgments which may be pronounced against offenders are to be executed, the subject is too extensive to be further treated of in an article like the present.

With respect to the expenses of prosecutions for indictable offences, the general provisions on the subject are contained in 7 Geo. IV. c. 64. According to these the court before which any person is prosecuted for felony or the following misdemeanors, viz., assaults with intent to commit felony; attempts to commit felony; riots; receiving stolen property; assaults upon peace officers in the execution of their duty, or upon persons acting in their aid; neglect or breach of duty by peace officers; assaults in pursuance of conspiracies to raise the rate of wages; obtaining property by false pretences; indecent exposure of the person; perjury and subornation of perjury, may, at the request of the prosecutor or any other person appearing on recognizance or subpœna to prosecute or give evidence, order payment of the costs and expenses incurred by the prosecutor in preferring the indictment, and also the reasonable expenses of the prosecutor and witnesses for the prosecution in attending before the grand jury and otherwise carrying on the prosecution; and also, whether a bill of indictment be preferred or not, may order the reasonable expenses incurred by any person by reason of attending on any such recognizance or subpœna, (such attendance, where no indictment is preferred, appearing to be in *bonâ fide* obedience to the recognizance or subpœna,)

and, except in cases of misdemeanor, by reason of attending before the examining magistrate, and also, except in respect of attendance before such magistrate in cases of misdemeanor, compensation for trouble and loss of time. Such payments are in general to be made out of the county rate.

It is difficult to discover upon what principle the selection of the cases of misdemeanor in respect of which the court is empowered to award costs has been made. Other cases might with justice be included; and it may be a question whether, under certain limitations, the power ought not even to be extended to the expenses of the prisoner's witesses.

Offences punishable on Summary Conviction.

It would be inconsistent with the limits of the present article to give a detailed account of the various offences punishable on summary conviction, in number far exceeding those which are indictable. They relate, however, principally to ale and beer houses, apprentices, petty assaults, the Customs and Excise, distresses, drunkenness, friendly societies, game, hawkers and pedlars, highways, turnpike roads, petty thefts not amounting to larceny, malicious injuries to property, pawnbrokers, railways, stage and hackney carriages, servants, vagrants, weights and measures, and the numerous offences punishable under the Metropolitan Police Acts.

Summary proceedings, except in the case of contempts of the superior courts of justice (which those Courts have been immemorially used to punish by attachment), were wholly unknown to the common law. Their institution appears to have originated partly in the necessity for relieving the ordinary tribunals from the immense increase of labour which would otherwise have been cast upon them, owing to the multiplicity of new offences of a trivial kind which were yearly created for the protection of society as it advanced in population and civilization, and partly in the desire to do more speedy justice in the case of such trifling offences than would have been possible had they been made indictable. In the case of indictable offences a party cannot in general, as before observed, be put upon his trial until a true bill has been found against him by a grand jury, and cannot be convicted except by the verdict of a petit jury: to have made all these minute offences indictable would therefore have entailed upon the class of persons qualified to serve as jurors a frequency of attendance which would have been found to be most troublesome and harassing. Accordingly numerous acts of parliament have from time to time vested in one or more justices of the peace or other persons the power to try parties accused of trifling offences without the intervention of a jury. The extension, however, of this mode of proceeding, has been always regarded with extreme jealousy.

Where an offence punishable on summary conviction before a justice of the peace has been committed, or is suspected to have been committed, the general course of proceeding is as follows:—An information (but which need not be in writing unless directed to be so by the statute which creates the offence) is to be laid before the justice authorized to take such information, who thereupon issues a summons to the party complained of, containing the substance of the charge, and giving him notice that at a certain time and place the hearing of the complaint against him will be proceeded with. If the party attend at the appointed time and place, and confess that he has committed the offence, the justice proceeds at once to convict him and to impose the penalty assigned by the Act which creates the particular offence. If he attend, but deny that he has committed the offence, or if he fail to attend, evidence is to be gone into for the purpose of showing that he has committed it. In the latter case, however, it must be first ascertained that he has been duly summoned. It appears that the examination of witnesses in summary proceedings must in all cases be upon oath, notwithstanding the Act creating the offence may authorize conviction *on the examination of witnesses*, without stating that the same is to be upon oath. So also such examination must be in the presence of the party com

plained of, where he appears; and, generally, all rules applicable to the trial of indictable crimes may be considered as applying to the trial of offences punishable on summary conviction, so far as such rules are compatible with that mode of proceeding. If, after hearing the evidence, the justice is of opinion that the charge is not substantiated, the party accused is to be acquitted. If, on the other hand, he thinks that it is, he is to convict the offender and to impose upon him the assigned penalty. Upon conviction the justice usually issues his warrant to apprehend the offender, in cases where corporal punishment is to be inflicted upon him, or else to levy the penalty incurred, by distress and sale of his goods. This is the general mode of proceeding, as well where the conviction is required to be before two or more justices, as where it may be before a single justice of the peace; but for particulars recourse must be had to the several statutes creating the offences or inflicting the punishment. In some cases a power of appealing to the quarter-sessions is given to the party convicted. [JUSTICE OF THE PEACE.]

For the method of proceeding with respect to offences punishable on summary conviction before the Commissioners of Excise or persons other than justices of the peace, reference must be made to the statutes on the subject.

The principal authorities besides the statutes of the realm which have been consulted in the preparation of this article, are Hawkins's *Pleas of the Crown;* Blackstone's *Commentaries;* Russell, *On Crimes and Misdemeanors;* Chitty's *Criminal Law;* Starkie's Treatises *On the Law of Evidence* and *On Criminal Pleading;* Dickenson's *Guide to the Quarter-Sessions*, by Talfourd; the 4th, 5th, 6th, 7th, and 8th Reports of the Criminal Law Commissioners; the Report of the Commissioners for revising and consolidating the Criminal Law, on the subject of Penalties and Disabilities in regard to Religious Opinions; and Hulton, *On the Law of Convictions.*)

LAW MERCHANT. [LEX MERCATORIA.]

LEAGUE, ANTI-CORN LAW, an association the object of which was to obtain by constitutional means the abolition of the duty on the importation of foreign corn.

The Anti-Corn Law League originated at a public dinner given to Dr. Bowring, at Manchester, 18th September, 1838, when it was proposed that the company present, between fifty and sixty in number, should form themselves into an association for promoting the principles of free trade. On the 24th of September, seven persons met to settle preliminary arrangements, and on the 4th of October about a hundred persons were enrolled as members of the Manchester Anti-Corn Law Association. On the 25th of the same month Mr. Paulton delivered, at Manchester, the first lecture on the corn laws, and on the 26th of November he lectured at Birmingham. In December, the Manchester Chamber of Commerce, after an adjourned debate, declared by a majority of six to one that "the great and peaceful principle of free trade on the broadest scale is the only security for our manufacturing prosperity, and the welfare of every portion of the community." Manchester now became the centre of a great movement in favour of free trade, and measures were at once adopted for giving to this movement a national character. On the 8th of December, 1838, the Manchester Association issued an address which was extensively circulated throughout the United Kingdom, recommending the establishment of similar associations and a complete organization of all who held views favourable to free trade. Early in 1839, the question of the corn laws and protective duties generally was agitated in most of the large towns. The operations contemplated by the Manchester Association were—the circulation of tracts and pamphlets, the employment of paid lecturers, and petitions to parliament. On the 10th of January, 1839, the sum of 2000*l.* was subscribed at Manchester to defray expenses, and by the end of the month the fund raised amounted to nearly 6000*l.* On the 22nd of January the Manchester Association convened a meeting of persons who were opposed to the corn laws, and a public dinner took place which was at-

tended by nearly eight hundred persons, many of whom were delegates from the large towns in England and Scotland; and about a dozen members of Parliament were present. A few days later, on the opening of the session of parliament, three hundred delegates from nearly all the large towns assembled in London for the purpose of discussing the operation of the corn laws and bringing the subject more immediately under the notice of the legislature. At this convention the name of the League was first adopted as a more correct designation of a body which comprehended members living in every part of the United Kingdom. A weekly periodical, entitled the 'Anti-Bread Tax Circular,' was commenced at Manchester under the auspices of the League. A more numerous staff of lecturers was engaged, and greater activity took place in the circulation of tracts and pamphlets. These labours were continued in 1839, 1840, and 1841, and great progress was made in enlightening and maturing public opinion. The distress which prevailed at this time in all the great branches of commercial and manufacturing industry exposed the policy of protective duties to a severe scrutiny. The lecturers employed by the League were everywhere, and the attention of the public was aroused even in quarters where it was most difficult to excite an interest in economical questions. Conventions, and conferences, and great public meetings were held in the large towns, and pamphlets and tracts were circulated in villages and hamlets. The press, whether favourable or not to the principles of the League, was compelled to discuss them. In May, 1841, Lord John Russell brought forward the government plan of a fixed duty, which was at once repudiated by the League as unsatisfactory. An appeal was made to the country, and in the new parliament a large majority of members was returned who were adverse to the commercial principles advocated by the League. The League prepared to meet this state of things by greater boldness and activity in all their operations. No more petitions were sent to parliament. In 1842-43 funds were raised to the amount of 50,290*l.*, and in the course of the twelve months nearly 10,000,000 tracts, weighing above 100 tons, were placed in the hands of 496,226 electors (237,000 in twenty-four counties, and 259,226 in one hundred and eighty-seven boroughs). Deputations from the League visited between twenty and thirty counties, and addressed the agricultural classes at great meetings. Weekly meetings were held at Covent Garden Theatre, at which the most able members of the League were the speakers. These meetings were always well attended, and produced an effect which it is very difficult to produce in the metropolis—the concentration of public opinion. The 'Anti-Bread Tax Circular,' published at Manchester, was discontinued, and a new paper with the title of the 'League' was commenced in London, which soon obtained a weekly circulation of twenty thousand copies. London instead of Manchester now became the centre of operations. This gave to the League, as a body, a more decidedly national character; but its opponents for a short time continued to represent its metropolitan advent as the intrusion of "strangers from Manchester." A few months afterwards, notwithstanding the strenuous opposition of many of the wealthy city houses, the election of one of the members for the city of London was carried by the enthusiasm which the League had created. In 1843 the Council of the League proposed to raise funds to the amount of 100,000*l.* A bazaar on a large scale, which was held at Covent Garden, in June, 1845, and realized 30,678*l.*, raised the fund proposed to 116,687*l.* Two years before a bazaar had been held at Manchester, which realized 10,000*l.*

On the 17th of February, 1844, a meeting was held at the Duke of Richmond's house, London, which was attended by several noblemen, and nearly fifty members of the House of Commons who were opposed to the principles of the Anti-Corn Law League. At this meeting the 'Agricultural Protection Society of Great Britain' was formed. The opponents of the Anti-Corn Law League had frequently represented that association as an illegal body, and now that they

were about to form an association precisely similar in constitution, they consulted Mr. Platt, Q.C. (now one of the barons of the Exchequer), who testified to the legality of the proceeding. But the energy and activity displayed by the League in appealing to public opinion, and boldly inviting public scrutiny of their principles, were not imitated by the Society; and its vigorous operations having succeeded in rousing general sentiment in their favour, they next sought to strengthen their influence in the Legislature. The Registration Courts were vigilantly watched, with the twofold objects of excluding Protectionist voters and augmenting the number of liberals on the electorial lists. In consequence, several of the more conspicuous members of the League obtained seats in Parliament. The final issue of this celebrated struggle has been partly anticipated under the head of CORN LAWS, and all that remains is to follow to its close the dissolution of the League itself, after victory had been achieved by a novel and ardent, yet peaceful agitation, in which great principles were sought to be carried by an appeal to the reason of the community.

On the opening of the parliamentary session of 1846, Sir R. Peel, as already stated, announced his conversion to the principles of the League, and his conviction of the fallacy of the arguments on which Protectionist doctrines had been defended. Consistently with these conclusions, the Minister introduced his measure, proposing a reduced scale of duties to continue for three years, and at the expiration of that period, namely, February 1849, only a mere registration duty of one shilling per quarter be levied on every quarter of corn imported. On May 15th, the Corn Law Repeal Bill was read a third time in the House of Commons, and carried by 329 to 229, and on the 26th of June it received the royal assent. The mission of the Anti-Corn Law League was of course ended, and a meeting was forthwith held (July 2nd) at the town-hall Manchester, to adopt measures for its suspension or *dissolution*. Mr. Cobden, who had been *the able and* indefatigable leader of the free-trade cause, moved a series of resolutions: one for suspending the active operations of the League, and closing its affairs without delay; another authorizing the revival of the League in case attempts should be made by the Protectionists to induce the Legislature to retrace its steps; by a third, the chairman of the council was requested to accept of 10,000*l.* in acknowledgment of his invaluable services in the cause. A public meeting was held in the same hall, at a later hour of the day, to adopt measures for raising a national testimonial to Mr. Cobden, whose pecuniary loss during the existence of the League was stated by the chairman, R. H. Greg, Esq., to be not less than 20,000*l.* A national subscription was agreed upon: the sum contributed at the meeting amounted to 18,500*l.* Ultimately, the national testimonial amounted to 79,000*l.*, which Mr. Cobden, in a letter to the chairman, accepted as the reward of past labours, but not as imposing a lien on his future services.

LEASE. A lease, or letting, is sometimes called a Demise (demissio). It is sometimes said that Lease is from the Latin 'locatio;' but as the verb which corresponds to the noun Lease is Let, it seems that the word Lease is the noun which corresponds to the verb Let. The verb Let is akin to the French 'laisser' and the German 'lassen.'

He who lets land is called the Lessor, and he to whom land is let is called the Lessee.

There are various legal definitions of a lease. A lease has been defined to be a conveyance of lands or tenements from lessor to lessee for life, for years, or at will, generally in consideration of a rent or other annual recompense to be paid by the lessee to the lessor. The reservation of a rent is not essential in a lease; but payment of rent is now the chief condition on which lands are let.

To constitute a lease, it is necessary that the lands must be let for a less time than the period for which the lessor has an interest in the lands demised. If a man parts with all his interest in the lands or tenements, the conveyance is an assignment [ASSIGNMENT], and not a

lease. The relation that is created by a lease between the lessor and lessee is usually expressed by the phrase landlord and tenant. The lessor has a reversion in the lands which are demised, that is, after the expiration of the lease the land reverts to him. The lessor, by virtue of this reversion, seignory, or lord's title, has the power of distraining on the land for the rent which is agreed on, and for the services which may be due by the terms of the lease; and fealty is always due to the lessor. [FEALTY.] The ordinary lease is that for a term of years, by which lease a rent, generally payable in money, at stated times, is reserved to the lessor. These stated times are usually quarterly periods.

The words used in a lease for the purpose of conveying that interest in the lands which constitutes a term of years are 'demise, grant. and to farm let.' These words are derived from the law-Latin expressions 'demisi, concessi et ad firmam tradidi.' The word 'firma,' farm, is said to signify originally 'provisions,' and 'to farm let' does not properly signify to let to be farmed, in the modern sense of the term, but to let on the condition of a certain rent being paid in farm, that is, in provisions. If this explanation is correct, a 'farmer' is one who had the use of lands on condition of paying a 'farm' or rent in provisions, such as corn and beasts. But the word 'farm' now signifies the lands which a man hires to cultivate upon the payment of a rent.

The interest which a man acquires in land by a lease for years is a term of years, or an estate for years. [ESTATE.] The word lease is used in common language also to signify the estate or interest which the lessee acquires by the lease; but the word lease signifies properly the contract or conveyance by which the lessee acquires the interest in the lands.

The words 'demise,' &c. above mentioned, are the proper words to constitute a lease for years: but any words are sufficient, which clearly show "the intent of the parties that the one shall divest himself of the possession (of the land), and the other come into it for a determinate time." When the written contract is not intended to be a lease, but an agreement for a future lease, it is often difficult to determine whether the contract is not so expressed as to make it a lease.

At common law, it was necessary for the lessor to enter on the lands in order to make the lease complete, and no writing was necessary. But the Statute of Frauds (29 Ch. II. c. 3, § 1) enacted, that all leases, estates, interests, of freehold or terms of years, created by livery and seisin [FEOFMENT] only, or by parol, and not put in writing and signed by the parties so making the same or their agents thereunto, lawfully authorized by writing, shall have the force and effect of leases or estates at will only, except leases not exceeding the term of three years from the making thereof, upon which the rent reserved to the landlord during such term shall amount to two-thirds at the least of the full and improved value of the thing demised. A deed is not necessary to constitute the writing a lease, unless the tenement is an incorporeal hereditament or a reversion or remainder. But leases are generally made by deed, because covenants can be made only by deed. [DEED.]

The word 'lands,' which refers to the subject matter of a lease, comprehends what is upon the lands, as houses and other buildings, though houses and buildings are generally mentioned specifically in the lease.

The law of leases comprehends a great number of rules, which may be conveniently reduced to the following general heads:

1. The things which may be subjects of leases.

2. The persons who may grant leases, and their powers to grant.

3. The form of leases, and the legal construction of the agreements contained in them.

The examination of these subjects belongs to treatises on Law. The article Leases and Terms of Years in Bacon's 'Abridgment' is generally referred to as a good compendium of the law. A lease may contain any agreements that are lawful. The object of the present article is to consider what agreements farming-leases should contain or should not contain, in order that the lease may be most

beneficial to the landlord and the tenant, and by consequence to the public generally.

The chief subjects of leases are houses and buildings of all kinds, cultivable lands, and mines. Many persons who have not the complete ownership of houses and lands, are enabled to grant leases under particular powers; and there are many statutes under which particular classes of persons are enabled or restrained as to the granting of leases, such as Bishops, Deans and Chapters, and others. [BENEFICE, p. 346.]

The kind of leases of which we shall treat here are farming leases, which are granted by persons who have full power to grant them on such terms as they please. The particular form of such leases, as already intimated, is a matter that belongs to the subject of public economy, and it is almost beyond the province of direct legislation.

At present a great part of the land in England and Wales is held by large proprietors, and the number of landowners who cultivate their own estates is comparatively small. In many parts of the kingdom the number of small landowners who cultivate their own farms has certainly been decreasing for some centuries, and they are probably fewer now than at any former period of our history. In England the great subdivision of land has been prevented by the form of government and the habits and feelings of those who have had the chief political power: and the great increase of wealth that has arisen out of the manufacturing and commercial industry of the country has tended to prevent the subdivision of land and not to increase it. Those who acquire great wealth in England by manufactures and commerce generally lay out a large part of it in the purchase of land; for the ownership of land is that which enables a man to found a family and to perpetuate it, to obtain social respect and consideration, and also political weight in the administration of public affairs. It facilitates his election to the House of Commons, and if he plays his part well, it may introduce him in due time to the House of Lords and place him among the nobility of England.

Those who cannot acquire land enough to give them political weight, are still anxious to acquire land as a means of social distinction, and as a permanent investment which must continually rise in value. Thus there is a constant competition among the rich for the acquisition of land, which raises its price above its simple commercial value; and a man of moderate means does not find it easy to purchase land in small quantities and on such terms as will enable him to obtain a proper remuneration for the cultivation of it.

The great mass of the cultivators in England are now tenant farmers, who hold their land either by leases for years or by such agreements as amount to a tenancy from year to year only; and there is the like kind of competition among them to obtain land upon lease, that there is among the wealthy to obtain land by purchase. The consequence is that more rent is often paid for land than it is worth: a consequence of the limited amount of land and of the number of competitors for it. This circumstance, however, combined with others, enables the landlord to impose conditions which are unfavourable to the tenant and to agriculture, and finally to himself.

Several things are essential to the good cultivation of land, whether it is held by lease or is the property of the cultivator. These essentials are, a knowledge of the best modes of husbandry, adequate capital, and a market in which the farmer may freely buy and sell all that he wants. Now, in the present state of agriculture in this country, not one of these three conditions exists in the degree which is necessary to ensure good cultivation. The greater part of the land in England, as already observed, is cultivated under leases or a tenancy from year to year; and the covenants in the leases are often such as to be an insuperable obstacle to good agriculture. The condition then of the tenant farmer, as determined by his lease, is that which we have to consider.

Many landholders have several objects in view in letting their lands besides the getting of rent. One of these objects is to maintain their political weight by commanding the votes of their tenantry:

and this is mainly effected by not granting them leases of their lands for determinate periods, such as seven, fourteen, or twenty-one years; but by making them very nearly tenants at will, or liable to quit at six months' notice. He who depends for his subsistence on having a piece of land to cultivate, out of which he may be turned on a short notice, will not be an independent voter. Nor can the landlord expect to have a good tenant who will improve his land, and a political tool at the same time. The uncertainty of the tenure will prevent a man of skill and capital from investing his money upon so uncertain a return. There may be many cases in which the personal character of the landlord is a sufficient guarantee to the tenant that he will not be disturbed in the possession of the land, even where he has no proper lease, so long as he cultivates it fairly and pays his rent. But the most intelligent landlords themselves admit that the only proper tenure of the tenant is that of a lease for a determinate period; and it is on this condition alone as a general rule, that a landlord can get men of capital and skill to cultivate his land. It has been maintained by arguments that are unanswerable, that if lands were let to farmer tenants on leases for a determinate number of years, and on conditions which should not interfere with the land being cultivated in the best mode, there would be a great amount of fresh capital applied to the cultivation of the land, with all the improvements of modern husbandry. It is contrary to experience and to all reason to suppose that a good farmer will apply his skill and capital to improvement of another man's property, unless he has the security that he will be remunerated.

The improvements which would follow from a good system of leasing would be the abolition of the evils which now exist in consequence of uncertain tenure and of bad leases. It is affirmed by the best authorities that the amount of capital which is now applied to the cultivation of the land in England is very inadequate, that a large part of the farmers have not sufficient capital to improve their lands, nor the necessary skill and enterprise; and it is maintained that these evils are mainly owing to the want of a sufficient security of tenure or the want of a lease, or, where there is a lease, to the absurd restrictions with which many of them abound.

It has been said, and truly enough, that there is no advantage to the landlord in granting a lease to bad cultivators, and that there are many such. Such a lease would not indeed be any advantage to the farmer himself or the community in general; but he who has land to let, and will let it on terms that are mutually profitable to the landlord and the tenant, will be much more likely to get a tenant of competent skill and capital than he who gives the farmer an uncertain tenure or binds him in the fetters of a bad lease.

The preservation of the game and the enjoyment of the pleasures of the chase, or of the profits derived from the wild animals, is another object which some landlords secure by their lease with as much minuteness and strictness as they do their rent. [GAME LAWS.] Thus, in addition to getting a rent from his land, the landlord often wishes to command the votes of his tenant and secure his game. With reference to these objects and certain other imaginary advantages which he purposes to secure by directing the mode of cultivation, he has a lease drawn up with conditions, restrictions, penalties, and feudal services, which no care on the part of the farmer can prevent him from breaking in some particular, and which no man of capital, skill, and independent feeling would consent to sign. Specimens of such leases have been printed and circulated. One of them appeared in the 'Leicester Chronicle' for June 28, 1845. This lease prescribes a mode of cultivation which is absolutely inconsistent with good farming. The landlord in such a lease directs the tenant how he must cultivate the land. If the directions which the landlord gives, comprehended the best modes of cultivation, they would be unnecessary if he had a good tenant, and they would not be observed by a bad one. A good tenant with sufficient capital will farm the land according to the system best adapted for the land, and he will be ready to avail himself of all improvements. A bad tenant, whether he has

capital or not, will not farm well simply because he is prevented from doing some things and bound to do others; for farming, like other matters, consists not only in doing a thing, but in doing it well. These conditions and restrictions, if enforced at all, can only be enforced by constant supervision, and must be an endless source of trouble and dispute.

But these farming leases are often copies of old leases, made in other days, and are unsuited to the present state of agriculture. The things which they require not to be done and those which they require to be done, are often inconsistent with good agriculture, or, in other words, they prevent the land from yielding that amount of produce which it would yield under the best system, not only without thereby being impoverished, but with the certainty of permanent improvement. Ignorance on the side of the landlord of his true interest is one of the reasons why many of these absurd leases still exist.

There can be no principle in the letting of land, if the object is simply to secure the best rent to the landlord and the permanent improvement of the land, which makes it different from the letting of any other piece of property. The good farmer hires land to cultivate, with the hope of deriving profit from the application of his skill and capital. He does not want the advice and direction of another man: he trusts to himself. The first object of the landlord is to get as much rent as his land is worth, and to secure it against deterioration during the tenant's occupation. The terms of the lease, then, should simply be, the payment of the rent agreed on, and the observance of such conditions as are found by experience and known to practical agriculturists to be necessary to secure the permanent value of the landlord's land. It is admitted by all reasonable people that the landlord should have ample security by the lease for his land being given up to him at the end of the lease in as good condition as he gave it to the tenant. The tenant wants no directions from the landlord, and no conditions in his favour, beyond the simple condition of being allowed to cultivate the land in the best way that he can for his own profit during a period sufficiently long to secure him a return for his outlay; and he acknowledges that he must submit to all conditions in favour of the landlord which are not inconsistent with his free cultivation, and which shall secure the permanent value of the landlord's property. Perhaps many landlords who now grant hard leases would admit this general principle: but when they came to details, they would insist on many conditions as necessary to secure their permanent interest, which a good farmer would object to as not necessary for that purpose, and also as inconsistent with his profitable cultivation.

The framing of such a lease as we have described in general terms, must be the joint work of intelligent, liberal landlords, and good tenant farmers. It may require some time, some more experience, and suggestions from many quarters before such a lease is got into the best form. But it is an object worth the consideration of all persons interested in the cultivation of the land, and the attempt has been made already. We have received a copy of such a lease from the Vale of Evesham Agricultural Association, which has been circulated for the purpose of obtaining the suggestions of competent persons.

It has been said that some farmers do not care for having long leases: they are willing to go on as they have done. But can it be shown that there is a number of intelligent farmers with capital, who prefer a yearly tenure to a lease of reasonable length? Besides, some of these agreements for a tenancy from year to year, contain restrictions almost as numerous and absurd as those in leases for a term of years. If there are farmers who prefer dependence to the independence which is the result of a fair contract between farmer and landlord, these are not the men to improve our agriculture; these are the men with little capital, and less skill, who have no hopes of improving their condition, who rely on the easy temper or good-nature of an indulgent landlord, and are taught that they and their labour must be protected from foreign competition. The intelligent farmer with capital seeks no protection against the

foreigner, and wants no indulgence from his landlord. He is ready to give, and he would be compelled by competition to give, to the landlord the full value for the use of his land, and he would ask for no more than the liberty of cultivating it in the best way.

Before, however, a good farmer could enter on the land with full confidence, he would have one favour to ask of his landlord; and that would be, not to protect him. If he wanted beans or oats to feed his cattle with, to increase his manure and so increase his crop of corn, he would ask the favour of buying them where he could get them cheapest, in order that he might have a greater return for his outlay and so better pay his rent, or even an increased rent. Under the protective system [CORN LAWS] a man who is protected, as it is termed, in one thing, is taxed in another; he may be protected in what he has to sell, but he must pay for that protection by being taxed in what he has to buy. The farmer in one part of the kingdom wants something that he does not produce; but it is produced in another part of the kingdom. Both parts are protected in what they produce, that each may be compelled to buy of the other; and each is taxed in what he buys in order that the other may be protected. Thus the legislature interfere with the prices of things. They do not impose a tax on foreign produce that comes into the kingdom simply with the view of getting revenue from it; they profess to interfere in order to keep up the prices of certain commodities that are produced in the kingdom. They profess to regulate within certain limits the prices for which the farmer must buy and sell his agricultural produce: they profess to do it; but everybody who knows the history of the corn laws knows that they cannot do it, and never have succeeded in the attempt. But they have succeeded in breeding up a race of farmers, and of landlords too, who believe that their true interests are best consulted by the government attempting to raise the prices of all agricultural produce, both that which a farmer buys and that which he sells. As matters stand now, it is thus:—We have a landlord who by his lease directs his tenant how to cultivate, and at the same time reserves the power of walking over his ground when he pleases to kill the game which the farmer must not kill, but which he must feed; a tenant with deficient capital and insufficient skill, and the shackles of a restrictive lease, or an agreement for a lease which constitutes a tenancy from year to year; and a legislature which interferes with prices and shuts out the farmer as well as others from buying in the cheapest market whatever agricultural produce he does not raise himself. Then there is a cry of agricultural distress, and when the ablest man in the House of Commons asks for a committee of inquiry into the cause of this distress, those who complain of the distress will not have the inquiry.

It has been shown [AGRICULTURE] that all duties levied on agricultural produce that is brought into these kingdoms, are protective duties, however small they may be. He who disputes this proposition is inaccessible to the cogent power of reason. He who admits it, and contends for the system, must contend that on the whole it does more good than harm. But the system continues, and we still hear of agricultural distress, so that the system at least does not prevent agricultural distress. Those who have handled the subject best attempt to prove, and we believe that they have proved, that the system causes agricultural distress, and that it is the chief obstacle to improved cultivation of land, the granting of good leases, the employment of fresh capital in the cultivation of land, and the employment of agricultural labour. All these subjects were urged by Mr. Cobden, in the House of Commons (1845), in a speech, when he moved for a select committee to inquire into the extent and cause of the alleged existing agricultural distress, and into the effects of legislative protection upon the interests of landowners, farmers, and farm-labourers—a speech unequalled for perspicuity of statement, practical knowledge of the subject, clearness of expression, and sound argumentation; a speech which would place Mr. Cobden, if he had not already earned that distinction, among the very few men who have views at once comprehensive and sound enough

to entitle them to the honour of directing the affairs of an industrious people.

The covenants contained in a lease, however few they may be, often occasion difficulty and dispute upon the expiration of the tenancy. The landlord may often claim more than his due, and the tenant may be disposed to do less. These difficulties are not peculiar to farm tenancies; they occur continually in the case of dwelling-houses let for a term of years upon the condition of keeping them in good repair. If such disputes cannot be settled amicably, or by reference to arbitration, the only way is by legal proceedings. It has been suggested that in the case of dwelling-houses in large towns like London, some easy mode of finally settling such disputes might be established. In such cases, the evidence of surveyors is the evidence on which a jury must give their verdict in case of legal proceedings; and it would be quite as satisfactory to all parties, if the evidence that is submitted to a jury, for their judgment, were submitted to a few competent persons to be chosen in some uniform manner, and whose decision should be final.

In 1845 an act was passed (8 & 9 Vict. c. 124) entitled 'An Act to facilitate the granting of certain Leases.' Its object is to substitute abbreviated forms for those now in use, and it is provided that in taxing any bill for preparing and executing any deed under the act, the taxing officer, in estimating the proper sum to be charged, is to consider "not the length of such deed, but only the skill and labour employed, and the responsibility incurred in the preparation thereof." It is enacted in section 4, "That any deed or part of a deed which shall fail to take effect by virtue of this act shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this act had not been made." There are schedules to the act, one of which gives, in column 1, short forms of expression which may be used in place of the ordinary expressions in leases, which are contained in column 2; and it is enacted by section 1, "That whenever any party to any deed made according to *the forms set forth* in the first schedule of this act, or to any other deed which shall be expressed to be made in pursuance of this act, shall employ in such deed respectively any of the forms of words contained in column 1 of the second schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same schedule, and distinguished by the same number as is annexed to the form of words employed by such party; but it shall not be necessary in any such deed to insert any such number." This act does not extend to Scotland. The amount of words saved by this act is not sufficient to compensate for the difficulties that may arise from persons using the abbreviated forms in cases where they may not intend them to have the full meaning which this act gives to them. He who wishes to guard himself either as landlord or tenant by suitable covenants will do better to express his meaning at full length, without availing himself of the abbreviated forms which this act invites him to use.

Leases in general require either an ad valorem stamp or the common deed stamp, without which the instrument cannot be given in evidence. Leases for a term determinable on a life or lives not exceeding three, and the leases of all ecclesiastical corporations, whether aggregate or sole, for any term not exceeding twenty-one years, are exempted from the duty. There is also a stamp duty on agreements for leases. This is one of the many modes of taxation.

LEET is the district subject to the jurisdiction of a court-leet. Sometimes the term is used to denote the court itself, the full style of which is "Court-Leet and view of Frank-pledge." Each of these titles is frequently used alone; but the omission does not affect the character or the jurisdiction of the court. The court-leet is also called a law-day, as being the ordinary tribunal.

One of the least improbable derivations of the word "leet" is that which deduces lath and leet from the Anglo-Saxon "lathian," or "gelathian," to assemble, both lath and leet indicating a district

within which the free male resiants (residents) assembled at stated times for preparation for military defence, and for purposes of police and criminal jurisdiction. Of the first of these objects scarcely any trace exists in the modern leet. The title of the court as a "view of Frank-pledge" points to its former importance, under the system of police introduced or perfected by King Alfred, which required that all freemen above twelve years of age should be received into a decenna, dizein, decennary, or tithing, sometimes called a visne, or neighhourhood, and in Yorkshire and other parts of the north, ten-men-tale (a number, tale, or *tally* of ten men), and forming a society of not less than ten friborgs, or freeborrows, freemen, each of whom was to be *borhoe*, that is, pledge or security for the good conduct of the others.

When a person was accused of a crime, his tithing was to produce him within thirty-one days, or pay the legal mulct for the offence, unless they proved on oath that no others of the tithing were implicated in the crime, and engaged to produce him as soon as he could be found. For great crimes the offender was expelled from the tithing, upon which he became an outlaw.

The duty of inspecting a decennary or tithing was called a View of Frank-pledge, the freeborrows having received from their Norman conquerors the designation well known in Normandy of frank-pledges. The principal or eldest of these freeborrows, and as such the person first sworn, who was denominated sometimes the tithing-man or tithing-head, sometimes the headborough or chief-pledge, sometimes the borsholder or borsalder (borhes-alder, or senior or ruler of the pledges), and sometimes the reeve, was especially responsible for the good conduct of each of his co-pledges, and appears to have had an authority analogous to that still exercised by the constable, an officer elected by the resiants for the preservation of the peace within the district that constitutes the leet, tithing, or constablewick. This officer is in many places called the headborough, which designation, as well as those of borsholder and tithing-man, is frequently used by the legislature as synonymous with that of constable. It is probable that all the frank-pledges were numbered according to rank or seniority, as in places where more than two constables are required the third officer is called the thirdborough. Blackstone, misled by the sound, supposes headborough to be the chief person or head of a town or borough. The true derivation will remind the readers of 'Hudibras' of the "wooden bastile" (stocks), which

> "None are able to break thorough,
> Until they're freed by *head of borough*."

The Holkham MS. of the Anglo-Saxon customary law says:—"A tithing (there called decimatio) contains, according to local usage, ten, seventy, or eighty men, who are all bound (debent) to be pledges (fidejussores) for each other. So that if any of them be accused (calumpniam patitur), the rest must produce him in court, and if he deny the offence, he is to have lawful purgation by the tithing (*i.e.* by their swearing to their belief of his innocence). A tithing is in some places called a *ward*, as forming one society, subject to observation or inspection within a town or hundred. In some places it is called 'borch,' that is, pledges, for the reasons above stated. In others it is called tithing (in the original decimatio), because it ought to contain ten persons at the least."

Leets are either public or private. The Public Leet is an assembly held in each of the larger divisions of the county, called a hundred, at which all freemen who are resiants within the hundred are bound to attend in person or by their representatives. These representatives were the reeves or chiefs of their respective tithings, whether designated by that or by any of the other appellations, each of whom was accompanied by four good and lawful men of, and elected by, the tithing which deputed them. This public court-leet was held formerly by the royal governor of the county, the ealdorman of the Saxons, the earl of the Danes, the comes or count of the Normans. This great functionary was accompanied by the shire-reeve, an officer elected by the county to collect the king's

rents and the other branches of the royal revenue, who, in the absence of the ealdorman, presided in the court, and governed the county as his deputy, whence he is called by the Normans a vice-comes or vicount, though in English he retained the name of shire-reeve or sheriff, the designation connected with his original and more humble duties. This public court, which was originally called the folkmote, being held successively in each hundred in the course of a circuit performed by the sheriff, acquired the name of the sheriff's *tourn*, by which name, though itself a court-leet, it is now distinguished from inferior private leets. The court-leets appear to have been created by grants from the crown, obtained by the owners of extensive domains (which afterwards became manors), and most frequently by religious houses, for the purpose of relieving their tenants and those who resided upon their lands from the obligation of attending the tourn or leet of the hundred, by providing a domestic tribunal, before which the resiants might take the oath of allegiance and the frank-pledges might be inspected, without the trouble of attending the tourn, and to which, as an apparently necessary consequence, the criminal jurisdiction of the precinct or district was immediately transferred. In these private leets the grantee, called the lord of the leet, performed the duties which, in the public leet or tourn, after the ealdorman or earl had permanently absented himself, fell upon the sheriff. Their duties he might perform either personally or by his steward. As a compensation for this, and his trouble in obtaining the franchise, it appears to have been the practice of the great landowner, who by his money and his influence had procured the grant of a private leet, to claim from resiants a certain small annual payment by the name of certum letæ. The tenants within the precincts of a private leet, whether in boroughs, towns, or manors, formed a body politic wholly independent of the tourn or leet of the hundred; whilst such upland or unprivileged towns as had not been formed into or included within any private leet, still appeared, *each by its tithing*-man and reeve, and four men of the tithing, and formed part of the body politic of the hundred. Each of these communities appears to have exercised most of those rights which it has of late years been supposed could not exist without a royal incorporation. In many cities and boroughs the ancient authority of the court-leet was in later times superseded by charter of incorporation, in some of which the popular election of magistrates was preserved entire; whilst in the great majority of cases, the right, though continued in name, was fettered, if not rendered altogether nugatory, by restrictions of various characters and degrees, which are still to be seen in incorporated boroughs not regulated by the Municipal Corporations Act. In other respects, the course prescribed by these charters was adapted to the changes which had taken place in the habits of the people since the institution of the court-leet. Many of the functions of the magistrates in the new incorporations were borrowed from the then comparatively recent institution of justices of the peace.

The court leet is a court of record, which has jurisdiction of such crimes as subject the offenders to punishment at common law. As criminal jurisdiction belongs exclusively to the kingly office, all criminal prosecutions are called pleas of the crown, and the courts in which such pleas are held are the king's courts, although granted to a subject; for such grant operates merely as an authority to the grantee to preside judicially by himself or his steward, and to take the profits of the court to his own use. The authority so exercised under the king's grant is called a lordship, and the grantee is said to be the lord of the leet. It may be claimed either by a modern grant or by prescription, that is, long established user, from which an ancient grant is presumed. The lord of the leet is commonly the lord of a manor, and the leet is usually coextensive either with the actual limits of the manor or with its boundary at some former period. There may, however, be several leets in one manor, and a leet may be appendant to a town or to a single house. It is not necessary that the lord of the leet should have a manor, or in-

deed that he should have any interest in the land or houses over which the leet jurisdiction extends. The crown may grant to A a leet over the lands of B, and the grantee of a leet in his own land may convey the land and retain the leet. The lord may be required by writ of mandamus to hold the court. Upon non-user of a leet, the grant is liable to be seised into the hands of the crown, either absolutely as for a forfeiture, or *quousque*, that is, until the defect be amended: the same consequence ensues upon neglect to appoint an able steward and other necessary officers, or to provide instruments of punishment.

Private leets are commonly held, as public leets *must* be, twice in the year, within a month after Easter, and within a month after Michaelmas, and even the former cannot, unless warranted by ancient usage, be held at any other time except by adjournment. The court appears to have been formerly held in the open air. It should be held at its accustomed place, though, if sufficient notice be given, it may be held anywhere within the district. All persons above the age of twelve years and under sixty (except peers and clergymen, who are exempted by statute, and women and aliens), resiant within the precinct for a year and a day, whether masters or servants, owe suit to (*i.e.* personal attendance at) this court, and here they ought to take the oath of allegiance. The suit to the court-leet is said to be real (*i.e.* regal or due to the king), because every one bound to do suit to such court as a resiant, is also bound to take the oath of allegiance, unless he has taken it before. But where a non-resiant is bound by tenure to join with the resiants in making presentments at the court-leet, the duty is not suit-real, for he shall not be sworn to his allegiance, &c. at this leet. It is merely suit-service, *i.e.* a suit forming one of the services due from the tenant to his lord in respect of the tenure. For the non-performance of such suit the remedy is by distress, as in case of other suits-service or rents-service. A man who has a house and family in two leets, so as in law to be conversant or commorant in both, must do his suit to the leet where his person is commorant, that is, where his bed lies, but if he occasionally reside in both, he is bound to do suit to each.

The Anglo-Saxon Hundred Court appears to have had jurisdiction in all causes, civil, criminal, and ecclesiastical; and also to have had the cognizance and oversight of all the communities of frankpledges within the hundred the members of these communities being bound for that purpose to attend at the Hundred Court by themselves or their elected representatives. The jurisdiction of the Hundred Court in ecclesiastical matters was taken away by an ordinance of William the Conqueror, which forbade the attendance of the bishop.

It was the province of the court-leet, as well the public leet of the hundred, as the private leet, to repress all offences against the public peace, and to enforce the removal of all public nuisances. The leet jury may make by-laws. The leet jury elect their chief magistrates, the reeve or constable, &c. of the private leet, and, as it would seem, the high constable (sometimes called the alderman) of the hundred.

Before the Norman conquest, and probably for some time after, this court of the leet was, if not the sole, at least the ordinary tribunal for the administration of criminal justice in the kingdom. Until the reign of Henry I., when, with respect to certain heinous offences, the punishment of death was substituted for pecuniary compositions, no crime appears to have been punished by death except that called in the laws of that prince "Openthifte," a theft where the offender was taken with the thing stolen upon him. Of this crime, as requiring no trial or presentment, the leet had no cognizance. Other offences, of however serious a nature, subjected the party to a mulct, or pecuniary fine, the amount of which was in many cases determinate and fixed.

Offences to be merely inquired of in leets are arson, burglary, escape, larceny, manslaughter, murder, rape, rescue, sacrilege, and treason, and every offence which was felony at common law. These offences being presented by the leet jury as indictors, and the indictment being

certified to the justices of gaol delivery, the indictees may be arraigned; but they cannot be arraigned upon the mere production of the court-roll containing the presentments. Formerly all offences inquirable in leets were also punishable there by amercement; but the power of adjudicating finally upon crimes in courts leet, whether public or private, is now limited to such minor offences as are still left under the old system of pecuniary compensation. No matters are cognizable in the leet unless they have arisen or have had continuance since the last preceding court.

An amercement is a pecuniary punishment which follows upon every presentment of a default or of any offence committed out of court by private persons. Amercements are to be mitigated in open court by affeerers (afferratores, from afferrare or afforare, *afferer*, to tax, or fix a price, hence the term afferege, used in the old French law to denote the judicial fixing of a price upon property to be sold). The affeerers by their oaths affirm the reasonableness of the sum at which they have assessed the amercement. This course is confirmed by Magna Charta, which directs that amercements shall be assessed by the peers of the offender, *i.e.* the pares curiæ, or suitors of the same court. The amercements, being affeered, are estreated (extracted) from the court-roll by the steward, and levied by the bailiff under a special warrant from the lord or steward for that purpose, by distress and sale of the goods of the party, which may be taken at any place within the district; or the lord may maintain an action of debt for such amercement. For a nuisance, the jury may amerce the offender, and at the same time order that he be distrained to amend it.

The steward of a leet is a judge of record, and may take recognizances of the peace; and he may impose a fine for a contempt or other offence committed in court, as where a party obstructs the jury in the execution of their duties, or by public officers in the discharge of their duties out of court. The amount of the fine is at once fixed by the steward, and therefore, though sometimes loosely called an amercement, it is not to be affeered. When a suitor present in court refuses to be sworn, it is a contempt for which a reasonable fine may be imposed; so if the jury, or any of them, refuse to make a presentment, or depart without making it, or make it before all are agreed. But the fine must be set upon each person individually. For the fine so imposed the lord may distrain or bring an action of debt. In all matters within the cognizance of a court-leet the lord or steward has the same power as the judges in the superior courts. He has indeed no power to award imprisonment as a punishment for offences presented in the leet, such offences being the subject of amercement only; but he may imprison persons indicted or accused of felony before him, and persons guilty of a contempt in face of the court.

If a nuisance within the jurisdiction of a leet be not presented at the court-leet, the sheriff cannot inquire of it in his tourn, for that which is within the precinct of the leet is exempt from the jurisdiction of the tourn; which has merely the same jurisdiction as private leets in such parts of the hundred as are not included within any private leet.

Of common right the constable is to be chosen by the jury in the leet; and if the party chosen be present, he ought to take the oath in the leet; if absent, before justices of the peace. If he refuse to accept the office, or to be sworn, the steward may fine him. If the party chosen be absent and refuses, the jury may present his refusal at the next court, and then he is amerced. But a person chosen constable in his absence ought to have notice of his election. A mandamus lies to the steward of a leet to swear in a constable chosen by the jury. By 13 & 14 Car. II. cap. 12, when a constable dies or goes out of the parish, any two justices may make and swear a new one until the lord shall hold a court-leet; and if any officer continue above a year in his office, the justices in their quarter-sessions may discharge him, and put another in his place until the lord shall hold a court. But the justices at sessions cannot discharge a constable appointed at the leet; and though they can appoint constables until the lord shall hold a

court, they cannot appoint for a year, or till others be chosen. A person chosen constable who is deficient in honesty, knowledge, or ability, may be discharged by the leet or by the Court of King's Bench as unfit. The steward may set a reasonable fine on a constable or tithingman who refuses to make presentments.

Though the leet has long ceased to be the principal and ordinary court of criminal jurisdiction, its power has been enlarged by several statutes, which give it cognizances over offences newly created, and it does not appear to have been at any time directly abridged by legislative interference. The business of the court has chiefly been affected by the creation of concurrent jurisdictions, particularly that of justices of the peace [JUSTICES OF THE PEACE], who have cognizance of the same matters, as well as of many others over which the court-leet has no jurisdiction. Justices of the peace are always accessible, whereas the court-leet is open only at distant intervals, and for a short period, unless it be continued by adjournment, which can only take place for the despatch of existing business. Another cause of the declension of these tribunals is that except in a very few cases the jurisdiction of the leet is confined to offences punishable at common law. In statutes which provide for the repression of new offences, the leet is commonly passed over in favour of justices of the peace. Blackstone reckons "the almost entire disuse and contempt of the court-leet and sheriff's tourn, the king's ancient courts of common law formerly much revered and respected, among the mischievous effects of the change in the administration of justice by summary proceedings before justices of the peace." It was not however left to the learned commentator to make this discovery. In the course of the very reign which witnessed the introduction of the modern system of justices of the peace, we find the Commons remonstrating against the violation of the Saxon principle of self-government and domestic administration of justice, resulting from the encroachments made upon the ancient jurisdiction of the leet by giving to the new tribunal of the justices of the peace a concurrent jurisdiction in matters usually brought before the court-leet, and an exclusive jurisdiction in other important matters In the last year of Edward III. (1377), the Commons by their petition in parliament prayed the king that no justice of the peace should inquire of anything cognizable in the courts of lords who had view of frankpledge, or of anything cognizable in any city or borough within their district, and should attend only to the keeping of the peace and the enforcing of the statute of labourers. To this petition the king returned the following unsatisfactory answer:—"The statutes heretofore made cannot be kept if the petition be granted." At this time, and until the passing of 27 Hen. VIII. c. 24, offences in leets were alleged to be against the lord's peace, not the king's.

The common notice of holding the court is said to be three or four days; but it is now usual to give fifteen days' notice.

The functions of the steward of a court-leet are mostly, if not wholly, judicial. Ministerial acts are performed by an inferior officer called the bedel or bailiff, who of common right is appointed by the lord or steward, though by custom he may be chosen by the jury, and sworn with the other officers chosen at the leet; and where, in a leet appendant to a borough, the bailiff so chosen has a discretionary power in impannelling the jury, this important function is a sufficient ground for issuing a Quo warranto to inquire into the title of the party who exercises it. The steward, at the customary or at a reasonable time before the holding of the court, issues a precept under his seal, addressed to the bailiff of the leet, commanding him to warn the resiants to appear at the time and place appointed for holding the court, and to summon a jury. The notice may be given in the church or market, according to the usage of the particular place; but it is said that if it be not an ancient leet, personal notice is necessary. According to the course most usually pursued, the steward opens the court by directing the court to be proclaimed; and this being the king's court, it is necessary that three proclamations should be made. This is

done by the bailiffs crying "Oyes" (hear) three times, and then saying once, "All manner of persons who are resiant or deciners, and do owe suit royal to this leet, come in and do your suit and answer to your names, upon pain and peril which shall ensue." The bailiff then delivers to the steward a list of persons summoned as jurymen, together with the suit or resiant roll. The suit-roll is then called over, and those resiants who are absent are marked to be amerced. The bailiff then makes three other proclamations, by crying "Oyes" three times, and then saying, "If any man will be essoigned, come in, and you shall be heard." The steward having called for the essoigns (excuses) enters them. The essoigns should regularly be adjourned to the next court for examination in the court roll or book.

Suit-real must be done in person; it cannot be done by attorney; and probably it cannot be released by the lord. But the suitor may be essoigned or excused for the particular occasion, which is done generally upon the payment of an essoign penny.

The constables are next examined as to their compliance with the orders received by them at the previous court. After this the leet jury is formed. This jury is chosen from the body of the suitors, and consists of not less than twelve, nor more than twenty-three. In some leets the jury continues in office for a whole year; in others the jurors are elected and discharged in the course of the day. A custom for the steward to nominate to the bailiff the persons to be summoned on the jury is valid. If a sufficient number of resiants to form a jury cannot be found, the steward has power to compel a stranger to serve, even though he be merely travelling through the district; but a woman, though a resiant, cannot be sworn.

After the jury is chosen a foreman is named, who is sworn as follows:—"You shall well and truly inquire, and true presentment make, of all such articles, matters, and things as shall be given you in charge; the king's counsel, your companions', and your own, you shall keep secret and undisclosed. You shall present no man for envy, hatred, or malice; nor spare any man for fear, favour, or affection, or any hope of reward; but according to the best of your knowledge, and the information you shall receive, you shall present the truth and nothing but the truth." As soon as the foreman is sworn, and the rest of the jury, they receive a charge from the steward, pointing out the nature of their duties, and of the matters which ought to be presented. The jury make their presentments to the steward, who, in cases of treason or felony, must return the presentments (in these cases called indictments) to the justices of gaol delivery if the offenders be in custody; if they be at large, the indictments must be removed into the King's Bench by certiorari, in order that process may issue thereon. In all other cases the steward of the leet has power, upon the complaint of any party grieved by the presentment, or, on the other hand, upon any suspicion entertained as to the concealment of any offence, by non-presentment, to cause an immediate inquiry into the truth of the matter by another jury, though in the former case the more usual course now is by certiorari or traverse.

A court-leet may be adjourned if the business of the particular court require it.

It is not necessary that notice should be given of an order made by the leet for abating a nuisance; the party being within the jurisdiction, must take notice of it at his peril. For the same reason he is also bound to take notice of a by-law.

The ordinary profits of a court-leet are the fines, amercements, and essoign pence, and belong, in the case of a public leet or tourn, to the king; in the case of a private leet, to the grantee or lord of the leet. In a private leet also, the lord, as above mentioned, is entitled to a further payment, in the nature of a poll-tax, capitagium, or chevage, by the name of certum letæ, sometimes called cert-silver, certainty-money, cert-money, and head-silver. When this payment is to be made on the day of the leet, the defaulters may be presented and amerced. For such amercement the lord may distrain; but he cannot distrain for the cert-money it-

self, without a prescription to warrant such distress. In the absence of both amercement and prescription, the lord's remedy is by action of debt.

Though the court-leet may now be considered as an antiquated institution in many respects, it is one of our old institutions that is characterized by many valuable features. But the court-leet is not inefficient in all places. It is stated in a valuable pamphlet by J. Ross Coulthart, Esq. 'On the sanatory condition of the town of Ashton-under-Lyne' (1844), "That as the power and authority of the surveyor or inspector of nuisances is limited to *common* nuisances, it is necessary in all cases of *private* nuisance to call in the aid of Lord Stamford's Court-leet Jury. This court, which has fallen into disuse in many towns, holds its sittings here (in Ashton-under-Lyne) regularly every six months; and the numerous amerciaments which are from time to time made upon the owners of property in respect of dangerous tenements, defective sewerage, and filthy nuisances, contribute in no small degree to correct abuses and to punish a class of careless and avaricious landlords, that neither the local acts nor common law could effectually reach." The author of this pamphlet has given at length the form of proceedings in the court-leet at Ashton, and the examples of the kinds of presentments and amerciaments. The author says at the end of the note, "In conclusion I would remark, that the prescriptive manorial powers exercised within the manor of Ashton-under-Lyne are not found to be in any respect oppressive; but on the other hand are found to be invaluable adjuncts to the effective working of our various local acts of parliament. Indeed I know of my own knowledge that the commissioners appointed under our police, gas, market, and water acts, frequently derive much valuable assistance from the presentments of the Court-leet Jury; and that if it were not for such excellent auxiliaries, several of the provisions of these acts would be altogether inoperative. In all these local acts of parliament a provision is introduced, reserving unimpaired the privileges of the manor to Lord Stamford."

LEGACY (Legátum), a bequest or gift of goods and chattels by will or testament. The person to whom it is given is termed the legatee (legatárius).

The bequest in no case confers more than an inchoate property on the legatee, which does not become complete till the assent of the executor or administrator with the will annexed, as the case may be, has been given. [EXECUTOR.] But, before such assent, the bequest is transmissible to the personal representatives of the legatee, and will pass by his will. The assent of the executor or administrator, however, cannot be refused except so far as this, that he is not bound to admit that there is any property due to the legatee till the debts of the deceased are paid.

Legacies are of two kinds, general and specific. A legacy is general when it is so given as not to amount to a bequest of a particular thing, or a particular fund of the testator; a specific legacy is a bequest of a specified thing, or a specific part of the testator's estate. The whole of the estate of a person deceased being liable for the payment of his debts, legacies of both kinds are of course subject to debts: but in case of a deficiency of the estate for the payment of the legacies, the general legatees can only be paid in equal proportion; and they must, as it is technically termed, *abate*. A specific legatee is not compelled to abate, or allow any thing by way of abatement, but his legacy may be taken for the payment of debts if the general legacies have all been applied to pay them and there is still a deficiency. Specific legatees may however be compelled to abate as against one another. If the part of the testator's estate which is specifically given has been disposed of by the testator in his life-time, or at the time of his death has ceased to exist in such form as described in his will, the general rule is, that the specific legatee loses his legacy, and is not entitled to any satisfaction out of the general estate; in such case the legacy is said to be adeemed, a term which has been derived from the Roman law, though the word "adimere" is not there used exactly in this sense (Dig. 34, tit. 4). There is also a third description of legacy, partaking somewhat of the nature of both kinds already men-

tioned, as a gift of so much money, with reference to a particular fund for payment. This is called a *demonstrative* legacy, but so far differs from one properly specific, that if the fund pointed out fails on any account, the legatee will be paid out of the general assets; yet it is so far specific that it is not liable to abate in case of a deficiency of the general assets.

Legacies may be given either absolutely (purè, as the Roman jurists termed it), or upon condition (sub conditione) or upon the happening of any contingency: provided it must happen, if at all, within the duration of a life or lives in being at the time of the decease of the testator and twenty-one years afterwards, allowing in addition the period of gestation where the contingency depends upon the birth of a child. Legacies may also be given in such a way that though no condition is expressed in distinct terms, it may be clearly inferred that the testator did not intend his gift to take effect till a definite time had arrived or a definite event had taken place. When a legatee has obtained such an interest in the legacy as to be fully entitled to the property in it, the legacy is said to be *vested*, and this property may be acquired long before the right to the possession of the legacy accrues. A vested legacy partakes of the incidents of property so far as to be transmissible to the personal representatives of the party entitled to it, or to pass by his will; a legacy which is contingent or not vested is no property at all with respect to the legatee. This distinction of legacies, vested and not vested, seems derived from the Roman law, which expresses the fact of vesting by the words "dies legati cedit."

Formerly, in all cases when a legatee died before the testator, the legacy lapsed or failed, and went to the person appointed residuary legatee by the testator, or if there was none such, to the next of kin; and lapse might also take place (as already observed with respect to a legacy given to a legatee at a particular time, or upon condition, or the happening of a contingency) if the legatee died before the appointed time arrived, or if the condition was not performed, or the contingency did not happen. The statute 1 Vict. c. 26, § 33, has modified the old rule, and directs that when legacies are bequeathed to a child or other issue of a testator, who shall die in his life-time, leaving issue, and such issue shall be living at the testator's death, the legacies shall not lapse unless a contrary intention appears upon the face of the will, but shall take effect as if the legatee had died immediately after the testator.

The rules by which gifts of legacies are construed are derived from the Roman law, or rather are a part of that law, which prevails in the ecclesiastical courts: for although the court of chancery has concurrent jurisdiction over legacies with the ecclesiastical courts, yet to prevent confusion it follows the same general rules. If however a legacy be charged upon or made payable out of real estate, then, as the ecclesiastical court has no concurrent jurisdiction, courts of equity are not bound to follow the same rules as to the construction of such gifts as in the case of personal estate.

The questions involved in the law relating to legacies are very numerous, and belong to treatises on that branch of the law.

Generally speaking, an executor cannot be compelled to pay legacies until after the expiration of twelve months from the decease of the testator, and not even then unless the assets should be realized and the debts paid or provided for; but as the rule is only for the general convenience of executors, if it should appear that all the debts of the testator are paid, the executor may be compelled to pay the legacy before the twelve months have expired. It may be stated however as a general rule, that legacies are payable twelve months after the death of a testator, and with interest from that time at 4 per cent., unless the testator has made some special provision as to time of payment and interest. The rule as to the twelve months is taken from the Roman law. When a specific legacy consists of some determinate chattel, whether real, as a lease for years, or personal, as a particular horse, the legatee, after assent by the executor to the legacy, may take possession of it, or sue

for it by action at law; but where the specific legacy consists of money, &c., and in all cases of general and of demonstrative legacies, no action at law lies unless the executor has, for some new consideration beneficial to himself, expressly promised payment. As a general rule therefore it may be stated that the remedies by legatees against executors are afforded by the courts of equity. (Roper *On Legacies;* Williams *On Executors and Administrators.*)

On the subject of legacies (legata) under the Roman law, Gaius (ii. 192-255) and the Digest, lib. xxx., xxxi., xxxii., 'De Legatis et Fidei commissis,' are the chief authorities. This is one of the subjects on which the Roman jurisconsults have most successfully exercised their sagacity and diligence, and in which the decisions of our English courts have adopted many of the principles of Roman law.

Legacies pay a tax, which is generally to be paid by the executor or administrator, and the stamp which denotes the payment of a legacy is to be affixed to a receipt which is given to the executor or administrator by the person who receives the legacy. There are also stamp duties on probates of wills and on letters of administration. These modes of taxing the transfer of personal property by will or in consequence of intestacy may be conveniently explained under PROBATE.

LEGATE (from the Latin Legátus, which is a participle from Légo, and signifies one who is sent with a certain commission). This word had various significations among the Romans. The legates (legati) were the chief assistants of the proconsuls and proprætors in the administration of the provinces. The number of legates differed according to the quality of the governor whom they accompanied; their duties consisted in hearing inferior causes and managing the smaller affairs of administration. They appear to have been chosen and appointed by the governor, though at the first institution of the office they were probably selected by the senate, as advisers to the governor, from the most prudent of their own body. The word legatus also signified a military officer who was next in rank to the general or commander-in-chief in any expedition or undertaking, and in his absence had the chief command. (Cæsar, *De Bell. Civ.*, ii. 17; iii. 51.) The word legatus is also often used to denote a person sent by the Roman state to some other state or sovereign power on matters that concerned the public interest: in this sense the word corresponds pretty nearly to our ambassador or envoy, except that the motives for sending a legatus, or legate, seem to have been occasional only, and the legates do not appear ever to have been permanent resident functionaries in a foreign community. Under the emperors those who were sent by them to administer the provinces of which the government was reserved to the emperors, were called legates (legati Cæsaris).

Under the republic the senators who had occasion to visit the provinces on their own business used to obtain what was called a "legatio libera," that is, the title and consideration of a legatus, or public functionary, with the sole object of thereby furthering their private interests. These legationes are said to have been called liberæ, or free, because those who held them had full liberty to enter or leave the city, whereas all other public functionaries whose duties were exercised beyond the limits of the city could not enter Rome till they had laid aside their functions; or because a senator could not go beyond a certain distance from Rome unless he obtained permission in the form of a legatio. Cicero, who on one occasion inveighs vehemently against the legatio libera, could defend it when it suited his purpose, and in a letter to Atticus (i. 1) he expresses his intention to visit Cisalpine Gaul in this capacity for the purpose of furthering his election as consul.

At the present day a legate signifies an ambassador, or nuncio, of the pope.

There are several kinds of papal legates; *legatus a latere, legatus natus,* &c. Legates a latere are sent on the highest missions to the principal foreign courts, and as governors of provinces within the Roman territory which are called legations (legazioni), when they are go-

verned by a cardinal. Legatus natus is a person who holds the office of legate as incident and annexed to some other office, and is, as we should say, a legate *ex officio*. As this office or title exempted the holder from the authority of the legates a latere, it was earnestly sought after by the bishops. The archbishop of Canterbury was formerly a legatus natus. Legates of a lower rank than cardinals are called nuncii apostolici (apostolic messengers).

LEGATEE. [LEGACY.]

LEGISLATION. In treating of legislation, we will explain, 1st, the meaning and etymology of the word; 2nd, the distinction between the legislative and executive powers of government; and 3rd, the difference between jurisprudential and legislative science—under which head we will make some remarks respecting the most convenient form for the composition of laws.

1. *Meaning and etymology of the word Legislation.*—A magistrate who proposed a law in Rome for the adoption of the assembly of citizens was said *legem ferre* (as we say, to *bring* a bill into parliament); and the law, if carried, was said to be *perlata*, or simply *lata*. Hence the term *legum lator*, or *legislator*, was used, as synonymous with the Greek *νομοθέτης*, in the sense of a lawgiver. From *legislator* have been formed *legislation*, *legislative*, and *legislature* (the last word signifying a person or body of persons exercising legislative power).

Legislation means the making of positive law. Positive law, as explained in the article [LAW], is made by the person or persons exercising the sovereign power in a community. The end of positive law, as explained in the same article, is the temporal happiness of the community.

2. *Distinction between the legislative and executive powers of government.*—A general command, or law, issued by a sovereign government would be nugatory, if it was not applied in practice to the cases falling within its scope, and if the pains denounced for the violation of it were not inflicted on transgressors. The execution of the general commands, or *laws*, of a sovereign government is therefore an essential part of the business of a government. Accordingly the ordinary functions of a government may be divided into the two classes of *legislative* and *executive*.

An *executive* command, or act, of a sovereign government, is a special command issued, or act done, in the execution of a law previously established by the government. Executive commands or acts are of two sorts, viz. *administrative* and *judicial*. The distinction between these two sorts of executive commands or acts may (in conformity with modern phraseology) be stated as follows. A judicial proceeding is a declaration, by a competent authority, that a person has (or has not) brought himself within the terms of a certain penal provision, or that he has (or has not) a certain legal right or obligation which another disputes with him. An administrative proceeding is for the sake of carrying a rule of law into effect, where there is no question about the legal culpability, or dispute about a legal right or obligation of a person. In an administrative proceeding the government functionary acts, or may act, spontaneously and from his own information; in a judicial proceeding he does not act until he is set in motion by others; and he can only take notice of the facts which the litigant parties bring before him. A judge cannot act until his court is (to use the French phrase) *seized*, or *saisi*, with the question; or (to use the language of our ecclesiastical courts) it is necessary "to promote (or set in motion) the office of judge." (Dégerando, *Institutes du Droit administratif Français*, Paris, 1829.)

It should be observed, that the division of the functions of government into legislative and executive is not exhaustive, inasmuch as neither class comprehends acts or special commands not founded on a previous general command or law, in other words, *privilegia*, concerning which see the article LAW; as well as treaties and other compacts of a sovereign government; as to which see SOVEREIGNTY.

The distinction between the making of laws and their execution is too obvious to have been overlooked by the ancient writers on government. The latter sub-

ject was treated by them under the head of *magistrates*. (See for example, Aristot., *Pol.*, vi. 8.) The distinction has however attracted peculiar attention from both speculative and practical politicians since the beginning of the last century, in consequence of the great importance attributed by Locke and Montesquieu to the separation of the legislative, administrative, and judicial powers of government; *i.e.* the exercise of the administrative and judicial functions by officers distinct from the supreme legislative body, and from each other. (*Essay on Civil Government*, Part ii. § 143-4; *Esprit des Lois*, xi. 6.) The importance of the separation in question has however been overrated by these and other writers; and it has never existed, and indeed can scarcely exist, to the extent which they suppose. The legislative functions of a government can be distinguished, logically, from its executive functions; but these functions cannot, in every case, be severally vested in different persons. In every free government (or government of more than one) the legislative bodies exercise some executive functions: thus, in England, the House of Lords is an appellate court in civil cases, and the House of Commons decides in cases of contested elections of its own members. In every form of government the public functionaries, whose primary business is the execution of the laws, exercise a considerable portion of (delegated) legislative power. It is scarcely possible to conceive a body of law so complete as not to require subsidiary laws for carrying the principal laws into execution; and a power of making these subsidiary laws must, to a greater or less extent, be vested in the executive functionaries. In the article LAW we have distinguished laws made by supreme from laws made by subordinate legislatures. The latter class of laws usually emanate from executive functionaries, especially judges. (See this subject further examined in the Preliminary Inquiry to Mr. Lewis's *Essay on Dependencies*, p. 37.)

3. *Difference between jurisprudential and legislative science.*—Positive law may be viewed from the two following aspects. First, it may be considered as an organic system, consisting of coherent rules, expressed in a technical vocabulary. Secondly, its rules may be considered singly, with reference to their tendency to promote the happiness of the community; in other words, their expediency or utility. Law viewed from the former aspect is properly the subject of the science of jurisprudence. [JURISPRUDENCE.] Law viewed from the latter aspect is the subject of a department of political science which is generally termed *legislative science*. (Legislation, in strictness, is concerned about the technical form, as well as the utility, of a law; but the term legislative science, as just defined, is sufficiently accurate for our present purpose.)

It is important to bear in mind the distinction, just pointed out, between the scientific or technical excellency of a system of law, and the expediency or utility of the rules of which it is composed. The distinction, however manifest, has been frequently overlooked, even by lawyers. For example, the excellence of a system of law, considered in a scientific point of view, has no connexion with the goodness of the government by which the laws were established. Law may be, and has been, cultivated as a science with admirable success under very bad governments. The scientific cultivation of law in Rome scarcely began until the Empire; and the great legal writers of France lived in times of political anarchy or despotism. A system of law of which the practical tendency may be most pernicious, may have the highest scientific or technical excellence. A code of laws establishing slavery, and defining the respective rights and duties of master and slave, might be constructed with the utmost juristical skill; but might, on that very account, be the more mischievous as a work of legislation. On the other hand, a system of law may be composed of rules having a generally beneficial tendency, but may want the coherency and precision which constitute technical excellence. The English system of law affords an example of the latter case. Owing to the popular character of the legislature by which its rules were enacted or sanctioned, it has a generally bene-

ficial tendency; but considered in a scientific point of view, it deserves little commendation. The writings of Mr. Bentham, in like manner, are far more valuable contributions to legislative than to jurisprudential science. The remains of the writings of the Roman lawyers, on the other hand, are of little assistance to the modern legislator, but they abound with instruction to the jurist.

The distinction between the technical excellence of a law and its expediency, or (in other words) between its form and its substance, is also important with reference to the question of *codification, i.e.* the making of a code of laws.

The making of a code of laws may involve any one of the three following processes:—1. The formation of a new system or body of laws. 2. The digestion of written laws, issued at various times, and without regard to system. 3. The digestion of unwritten law, contained in judicial decisions and authoritative legal treatises. The ancient codes of law were for the most part works of new legislation; such were, for example, the codes of Solon and Draco, the Twelve Tables, the code of Diocles of Syracuse, and others. The *codices* of Theodosius and Justinian afford examples of the digestion of written laws. [CONSTITUTIONS, ROMAN.] The Digest or Pandects of Justinian afford an example of the digestion of unwritten law. The French codes were not digests of the existing law of France, either written or unwritten; but they were in great measure founded on the existing law. The same may be said of the Prussian Landrecht. The statutes for consolidating various branches of the criminal law, the bankruptcy laws, the customs laws, the distillery laws, &c., are instances of the digestion of the written law of England. The Criminal Law Commissioners have furnished a specimen of a digest of the English common (or unwritten) law relating to theft. (*First Report*, 1835.) The digestion of existing law, whether written or unwritten, requires merely juristical ability; the making of new laws requires, in addition to the knowledge and skill of the jurist, that ability which we have termed legislative. In other words, the making of new laws requires both attention to their utility or expediency, and technical skill in the composition or drawing of them Popular forms of government secure a tolerably careful examination of laws, with reference to their expediency; but they do not secure attention to the technical or scientific department of legislation. Indeed nearly all the principal codes of laws have emanated from despotic governments, viz. the Roman, Prussian, Austrian, and French codes. The difficulty of passing an extensive measure through a popular legislature has, in free governments, discouraged attempts at systematic digestion of the law. The digest of the law of real property in the state of New York however affords an example of such digest passed by a popular legislature.

The most convenient form for the composition of laws is a subject which has exercised many minds, but on which we cannot, consistently with the plan of this work, make more than a few remarks.

The inconveniences arising from too great prolixity or too great conciseness in the phraseology of laws are stated by Lord Bacon, in the 66th and 67th aphorisms of his eighth book *De Augmentis.* If an attempt be made by an enumeration of species, to avoid the obscurity which arises from the use of large generic terms, doubts are created as to the comprehensiveness of the law; for, as Lord Bacon well observes, "Ut exceptio firmat vim legis in casibus non exceptis, ita enumeratio infirmat eam in casibus non enumeratis." (*Ib.*, aph. 17.) On the other hand, vague and extensive terms, if unexplained, are obscure and frequently ambiguous. The best mode of producing a law which shall at once be comprehensive, perspicuous, and precise, probably is, to draw the text of the law in abstract and concise language, and to illustrate the text with a commentary, in which the scope, grounds, and meaning of the several parts of the law are explained. A commentary such as we now speak of was suggested by Mr. Bentham (*Traités de Législation*, tom. iii. p. 284; *De la Codification*, s. 4), and the penal code recently prepared for India has been drawn according to this plan. Doubts

will arise in practice respecting the interpretation of the most skilfully drawn laws; and the best guide to the interpretation of a law is an authentic declaration, made or sanctioned by the legislature which enacted it, of its scope or purpose. The want of such a commentary frequently causes the scope of a law to be unknown; and hence the tribunals often hesitate about enforcing laws which may be beneficial. (*Dig.*, lib. i. t. 3, fr. 21, 22.)

It seems scarcely necessary to say that laws ought, where it is possible, to be composed in the language most intelligible to the persons whose conduct they are to regulate. In countries where the great majority of the people speak the same language (as in England or France), no doubt about the choice of the language for the composition of the laws can exist. In countries however where the people speak different languages, or where the language of the governing body differs from that of the people, or where the bulk of the people speak a language which has never received any literary cultivation, a difficulty arises as to the language in which the laws shall be written. Where the people speak different languages, authentic translations of the original text of the laws should be published. Where the language of the governing body differs from that of the people (which is generally the case in newly conquered countries), the laws ought to be issued in the language of the people. It is comparatively easy for a small number of educated persons to learn a foreign language; whereas it is impossible for the people at large speedily to unlearn their own, or to learn a new tongue. Thus the Austrian government in Lombardy uses the Italian language in all public documents. When the language of the bulk of the community has not received a literary cultivation, the language used by educated persons for literary purposes must be employed for the composition of the laws. Thus in Wales, the Highlands of Scotland, and the west of Ireland, the language of the laws and the government is not Celtic, but English; and in Malta, where the bulk of the people speak a dialect of Arabic, the laws are published and administered in Italian, which is the literary language of the island.

An able analysis of the logical structure of a legal sentence, and an explanation of the most perspicuous and convenient manner of arranging its several parts (consisting of antecedent or subsequent conditions, limitations, exceptions, &c.) will be found in a paper by Mr. Coode, appended to the Report of the Poor Law Commissioners upon Local Taxation (3 vols. folio, 1843).

LEGITIMACY. [BASTARD.]

LEGITIMATION. [BASTARD.]

LETTER or POWER OF ATTORNEY is an instrument by which one person authorises another to do some act for him: it may be used in any lawful transaction, as to execute a deed, to collect rents or debts, to sell estates, and other like matters. The authority must be strictly followed, for the principal is only bound by the acts of his agent to the extent to which the letter of attorney authorises him, and if the agent goes beyond his authority he is personally liable to the party with whom he contracts. The power which authorises an attorney or agent to do some particular act impliedly includes an authority to do whatever is incident to that act; for instance, a power to demand and recover a debt authorises the arrest of the debtor in all cases where it is permitted by law. But a power to receive money and to give releases, or even to transact all business, does not authorise the attorney to negotiate bills received in payment. In fact all written powers, such as letters of attorney or letters of instruction, receive a strict interpretation; the authority is never extended beyond that which is given in terms, or is absolutely necessary for carrying the authority into effect. An attorney, unless power be specially given him for that purpose, cannot delegate his authority or appoint a substitute, and, generally speaking, the words of general authority usually inserted in letters of attorney, after giving the particular authority, do not enlarge it.

The authority must be executed during the life of the person who gives it, for the act which is done by the attorney is

considered to be the act of him who gives the authority.

Powers of attorney are generally executed under hand and seal, that is, by deed, and where they contain an authority to bind the principal by deed, it is essential that they should be so executed. When the agent signs any instrument which is to bind his principal, he must sign it in the name of the principal, and not in his own name.

A power of attorney, unless it be given as a security, is revocable either by the personal interference of the principal or by his granting a new power to another person. But if the power has been given as a security, it has been decided that it is not revocable by the principal.

A letter of attorney is also in general revoked by the bankruptcy of the principal, unless it is coupled with an interest. (Paley's *Principal and Agent*, and the various treatises on mercantile law.)

LETTERS OF CREDENCE. [AMBASSADOR.]

LETTER OF CREDIT. [CREDIT, LETTER OF.]

LETTER OF MARQUE. [PRIVATEER.]

LETTERS PATENT, the king's letters, sealed with the great seal. These grants, says Blackstone (*Comment.* b. ii. ch. 21), whether of lands, honours, liberties, franchises, or anything else that can be granted, are contained in charters or letters patent, that is, open letters, literæ patentes. They are so called because they are not sealed up, but open to view, with the great seal pendant at the bottom, and are usually directed or addressed by the king to all his subjects at large. Letters patent, in the time of Queen Elizabeth, as well as in several preceding reigns, were not unusually obtained for purposes of mere monopoly. They are now frequently granted under the royal authority as the reward of ingenuity, and are in some cases the only means by which a man can secure any compensation for a discovery, or for the labour and expense which he may have employed in perfecting an invention. The consideration of the legal rights of patentees, and of the modes in which they may be acquired and secured, properly belongs to the head of Patents. At present it may be sufficient to refer the reader to Collier, 'Essay on the Law of Patents for New Inventions; to which are prefixed two chapters on the General History of Monopolies, and on their Introduction and Progress in England to the time of the Interregnum,' 8vo. Lond. 1803; to Hand, 'Law and Practice of Patents for Inventions,' 8vo. Lond. 1808; Godson, 'Practical Treatise on the Law of Patents,' 8vo. Lond. 1823; with the 'Supplement,' 8vo. Lond. 1832; and Rankin, 'Analysis of the Law of Patents,' 8vo. Lond. 1824. Many letters patent have been granted by the king to the founders of schools and other charitable endowments, empowering the donor to make rules and ordinances for the government of his charity, and constituting into a body corporate those persons and their successors whom the founder should choose or nominate.

LETTERS, THREATENING. [CRIMINAL LAW.]

LEVANT COMPANY. [JOINT-STOCK COMPANIES.]

LEVARI FACIAS. [BENEFICE, p. 347.]

LEX. [LAW.]

LEX MERCATORIA, or LAW-MERCHANT, in a general sense, denotes the usages and customs of merchants which, having been adopted as part of the law of most countries, and particularly of maritime states, for the protection and encouragement of trade, have been termed a branch of the law of Nations. (Blackstone's *Commentaries*, vol. iv. p. 67.) In this general signification of the term, the law-merchant is at the present day extremely indefinite, as different countries have adopted different portions of it, and the mercantile usages and customs common to all are few in number. Some centuries ago, however, when the transactions of commerce were less complicated, and the rules by which they were governed were consequently simple, the provisions of the Lex Mercatoria appear to have been better understood and ascertained. Thus we find the law-merchant frequently referred to in general terms by our earlier English statutes and charters as a well-known system,

and distinguished from the ordinary law; as, for instance, in the stat. 27 Edw. III., 1353, it is declared "that all merchants coming to the Staple shall be ordered according to the law-merchant, and not according to the common law of the land;" and the Charta Mercatoria, 31 Edw. I., 1304, directs the king's bailiffs, ministers, &c. "to do speedy justice to merchants, *secundum legem Mercatoriam.*"

Coke mentions the law-merchant as one of the great divisions of which the law of England is composed (Co. Litt., 11, b.), and the custom of merchants is said to be part of the law of England of which the courts are to take judicial notice. (*Vanheath* v. *Turner*, Winch's *Reports*, p. 24.) This, however, must be understood to apply only to general customs, as the rule does not comprehend particular or local usages which do not form part of any general system. The generality of the expression has caused much misunderstanding, and merchants in England have been often led to infer, that when practices or rules of trade have become established among them so as to become "customs" in the common meaning of the term, they form part of the law of the land. This misconception has frequently led to improper verdicts of juries in mercantile trials. It is clear, however, that the Lex Mercatoria, when used with reference to English law, like the Lex et Consuetudo Parliamenti, merely describes a general head or division of the system. What customs or rules are comprehended under that division must always be matter of law for the consideration of the judges; and it is said by Chief-Justice Hobart, in the case of *Vanheath* v. *Turner* above cited, that if they doubt about it, they may "send for the merchants to know their custom, as they may send for the civilians to know their law." The principle seems to be as alluded to by Lord Hale in a case in Hardres's *Reports*, p. 486, that the courts are bound to take notice of the general law of merchants; but that, as they cannot know all the customs which form part of that law, they may inform themselves by directing an issue or making inquiry in some less formal manner. The latter mode has not unfrequently been adopted in modern times, and evidence of mercantile customs has sometimes been given before juries. When the custom is ascertained, the court may declare it to be legal or not according to their judgment; for the expression, that the court is bound to take notice of the general law of merchants, does not mean, or should not mean, that the custom, simply as such, must be recognised as law by the judges. The recognition of the custom by the judges makes it law. However, when the judges do recognise a general custom of trade, people are apt to consider that the custom which the judges recognise as applicable to the particular case, is itself the law, instead of considering, as they ought to do, that the judges, finding the custom to be general and a good custom, declare it to be legal. When once the custom has been thus recognised, it is law, and not before. (1 Douglas's *Reports*, p. 654; 1 Bingham's *Reports*, p. 61.)

LIBEL (from the Latin 'libellus,' a little book) is a malicious defamation, expressed either in writing, or by signs, pictures, &c., tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and thereby exposing him to public hatred, contempt, or ridicule. (Hawkins,, *P. C.*)

This species of Defamation is usually termed *written scandal*, and from the considerations that the offence is committed upon greater deliberation than the mere utterance of words, which are frequently employed hastily and without thought, and that the effect of a writing continues longer and is propagated farther and wider than verbal defamation, it is generally treated as a more serious mode of defamation than Slander. [SLANDER.]

Whatever written words tend to render a man ridiculous or to lower him in the estimation of the world amount to a libel; although the very same expressions, if spoken, would not have been slander or defamation in the legal sense of those words. To complete the offence, publication is necessary, that is, the communication of the libel to some person, either the person himself who is libelled or any other. The mere writing of defamatory matter without publication is not an offence punishable by law; but if a libel in

a man's handwriting is found, the proof is thrown upon him to show that he did not also publish it.

There are two modes in which libellers may be punished, by indictment or criminal information and by action.

Indictment or criminal information is for the public offence (as it is termed), for every libel has a tendency to a breach of the peace by provoking the person libelled; the civil action, which is on the case, is to recover damages by the party for the injury caused to him by the libel.

On the criminal prosecution it was till recently wholly immaterial whether the libel were true or false, inasmuch as it equally tended to a breach of the peace, and the provocation, not the falsehood, was the thing to be punished; and therefore the defendant on an indictment for publishing a libel was not allowed to allege the truth of it by way of justification. But in a civil action the libel must appear to be false as well as scandalous, for the defendant may justify the truth of the facts, and show that the plaintiff has received no injury. It is true that in one sense the person may have received great injury, that is, loss of character and profit, by the publication of the libel; and therefore the word injury must here be taken in the proper sense of injury, as explained in DAMAGE.

But although the truth of a libel was no justification in a criminal prosecution, yet it was so far considered an extenuation of the offence, that the Court of King's Bench would not grant a criminal information unless the prosecutor by affidavit distinctly and clearly denied the truth of the matters imputed to him, except in those cases where the prosecutor resided abroad, or where the imputations were so general and indefinite that they could not be expressly contradicted, or where the libel was a charge against the prosecutor for language held by him in parliament.

A fair report of judicial proceedings does not amount to a libel, but a publication of ex-parte proceedings before a magistrate may be punished as such.

A petition, containing scandalous matter, presented to parliament or to a committee of either House, and legal proceedings of any kind, however scandalous the words used may be, do not amount to a libel. But if the petition were delivered to any one not being a member of parliament, or the legal proceedings were commenced in a court not having jurisdiction of the cause, they would not be privileged. Confidential communication reasonably called for by the occasion, as charges made by a master in giving the character of his servant to a party inquiring after it, or a warning by a person to another with whom he is connected in business as to the credit or character of a third party about to deal with him, are considered as privileged communications, and are not deemed to be libels unless malice be proved, or the circumstances be such that malice may be inferred by the jury.

It was long a disputed question whether the jury, in a criminal prosecution for libel, should deliver their verdict only with reference to the facts of the publication of the libel and of the matter of it, or should also found their verdict on their opinion of the matter being libellous or not. It was contended by the judges and most of the lawyers that the judge should determine whether the matter was a libel or not, and charge the jury accordingly. But it was settled by an act of parliament that the jury must find not only the fact of publishing, but whether the matter in question be a libel or not (32 Geo. III. c. 60, extended to Ireland by 33 Geo. III. c. 43). In a civil action the question whether the publication is or is not a libel is decided by the judge or court.

The punishment in a criminal prosecution may be fine and imprisonment; and upon a second conviction for publishing a blasphemous and seditious libel, the court might sentence the offender to banishment for any term it might think fit. (1 Geo. IV. c. 8.) But this was repealed by 11 Geo. IV. & 1 Wm. IV. c. 73.

The printer of a libel is liable to prosecution as well as the writer, and so is the person who sells it, even though he is ignorant of its contents.

By the 28th section of 38 Geo. III. c. 78, a bill of discovery may be supported against the editor of a newspaper or other person concerned in the publication or interested in the property thereof, to com-

pel a disclosure of the name of the author of the libel, or of the name of any person connected with the publication against whom the party libelled may think proper to bring an action; and such a bill may also be maintained against any person suspected of being the author, which would compel him to discover on oath whether he did or did not write the libel in question. (Blackstone, *Com.*; Starkie and Holt, *On Libel*; Selw., *N. P.*; Bac., *Abr.*, tit. "Libel;" LAW, CRIMINAL.)

The act of 6 & 7 Vict. c. 96, entitled 'An act to amend the law respecting defamatory words and libel,' has made some alterations in the law of defamation and libel. The act commences with the preamble, "For the better protection of private character, and for more effectually securing the liberty of the press, and for better preventing abuses in exercising the said liberty, be it enacted," &c. The act enacts—§ 1, That in any action for defamation it shall be lawful for the defendant, subject to a certain notice in writing therein described, to give in evidence in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation at such time as in the said section is more particularly described.

§ 2 enacts, That in an action for a libel contained in any public newspaper or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted without actual malice and without gross negligence, and that at such time as the section mentions he inserted in such newspaper or other periodical publication a full apology for the said libel, or made such other apology as in the said section is more particularly described.

§ 3 enacts, That if any person shall publish any libel upon any other person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing of any matter or thing touching any other person, with intent to extort any money or security for money or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, such offender on conviction may be imprisoned for any term not exceeding three years. This enactment does not in any way affect any law as to the sending or delivery of threatening letters or writings.

§ 4 enacts, That if any person shall maliciously publish any defamatory libel, knowing the same to be false, on conviction he shall be liable to two years' imprisonment, and to pay such fine as the court shall award.

§ 5 enacts, That if any person shall maliciously publish any defamatory libel, on conviction he shall be liable to fine or imprisonment, as the court may award, but the imprisonment is not to exceed one year.

§ 6 makes an important change. It enacts, That on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as in this section is afterwards mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published. The defendant must in his plea to such indictment or information allege the truth of the matters charged in the manner that is required in pleading a justification to an action for defamation.

§ 7 enacts, That when on the trial of any indictment or information for the publication of a libel, under the plea of Not Guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to the defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

§ 8 enacts, That in the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment be given for the defendant, he shall be entitled to recover from the prosecutor the costs that he has sustained by reason of such indictment or information; and that upon

a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by him by reason of such plea.

This act does not extend to Scotland, § 10. As it was doubted whether or not it did extend to Ireland, this act was extended to Ireland by 8 & 9 Vict. c. 75.

Defamation and libel were punished among the Romans. The oldest extant rule about defamation and libel is contained in the fragments of the 'Twelve Tables,' which punished both slanderous words and libellous writings. (Cicero, *De Repub.*, iv. 10.) The penalty was capital (in the Roman sense of that term), and it appears to have been death. Libellous writings were generally denominated "famosa carmina" and "mala carmina." In course of time the Praetorian Edict modified the old law, or probably it fell into disuse. The praetor allowed an action for slander which was against "boni mores" (*Dig.* 47, tit. 10, s. 15); and against "boni mores" means, that which was disapproved of by the positive morality of the community and tended to bring infamy or odium on the person against whom it was directed. The technical word for this kind of "slander" was Convicium, which properly meant something said to a man's face that was injurious; but the commentators on the Edict laid it down that there might be Convicium even if the person against whom it was directed was not present. Convicium in fact was personal abuse which tended to damage a man and was said with circumstances of great publicity. But the Praetor's Edict extended to other cases, and allowed an action wherever a man had done or said anything which injured a person's character. This general clause included libellous writings, and many other things, such as certain modes of soliciting women's chastity, and addressing them in obscene language. The penalty in all these was a sum of money assessed by Recuperatores as damages.

Under the imperial government the term "liber famosus," often occurs: it signifies any writing in prose or verse which tended to injure a man's character (ad infamiam alicujus). The offence consisted in writing the libel, spreading it about or selling it, or in causing these things to be done maliciously (dolo malo); it made no difference whether the libel was anonymous or had a false name to it. The penalty was (according to some law, the name of which is not known) that the libeller, if convicted, became "intestabilis," that is, he could not make a will or be a witness to a will. (*Dig.* 28, tit. 1, s. 18.) A senatusconsultum extended the penalties of this lex to cases where there was no writing, but only marks which were of a like tendency; this must mean drawings and caricatures, such as are now published in London. Everything therefore which tended to the "infamia" of a person, writings in prose or verse, and drawings, whether a man was mentioned or not mentioned, provided the person intended was clearly pointed at by such writings or drawings, were punishable offences; and writer, draftsman, and all concerned were liable to the legal penalty.

This legislation seems to belong to the Imperial period, though it was not intended to protect the emperor only. Augustus commenced this legislation (Sueton. *Octavian.*, 55), and probably his chief object was to protect himself. The Roman Cæsars, like other high personages in modern times, were the objects of pasquinades and various kinds of compositions which were intended to satirize them and make them ridiculous. The penalty of the law of Augustus is not certain; but in later times various Senatus consulta increased the penalty to Deportation or perhaps only relegation. If the author of a liber famosus had been punished in a criminal prosecution (judicium publicum), the injured person might still have his action, if he was mentioned by name in the libel. (*Dig.* 47, tit. 10, s. 6.) But if a man libelled a guilty person (nocens), it was considered equitable that he should not be subject to any legal penalty, "because the bad deeds of evil-doers ought to be known, and it was expedient that they should be known." Compare the 6 & 7 Vict. c. 96, § 6.

The "libri famosi," or "libelli famosi," of the Imperial period, signified anony-

mous writings, which contained a charge against some person, and were either sent to the Cæsar or to some magistrate, or put in some place where they might be found, for the purpose of causing injury to the person accused. This is the only signification of the expression "libelli famosi," in the Theodosian and Justinian codes. Constantine the Great declared that such charges should not prejudice any person who was mentioned in them, and that such writing should be burnt when the author was unknown. If the author was discovered, he was punishable even if he could prove the truth of the matter contained in the writing. Other constitutions on the same subject were made after the time of Constantine.

(Rein, *Das Criminalrecht der Römer.*)

LIBERTI'NUS. [SLAVE.]

LIBERTY. This word is the Latin *libertas.* The corresponding Teutonic word is *freiheit*, or, as it appears in English, *freedom.*

Liberty and freedom are familiar words with indefinite meanings. 'Liber,' the adjective which corresponds to the noun 'libertas,' is properly opposed to 'servus,' or 'slave;' and libertas is the status of a freeman, as opposed to servitus, or the status of a slave. This division of freemen (liberi) and slaves (servi) was the fundamental division of persons in the Roman law (Gaius, i. 9). This word Liberty, then, in its origin indicates merely the personal status of a man as contrasted with the condition of servitude. In Greek the like opposition is expressed by two other words (δεσπότης, δοῦλος). But the word Libertas had also a political meaning among the Romans. When the Romans had ejected their last king they considered that they had obtained their Liberty (Livy, ii. 1). The political meaning of libertas (liberty) was derived from the contrast of liberty and servitude in the person of individuals; and if the mass of a nation were subjected to the arbitrary rule of one man, that was considered a kind of servitude, and the deliverance from it was called libertas, a term which in this sense is clearly derived from the notion of liberty as obtained by him who was once a slave.

In the Greek writers the words (δεσπότης and δοῦλος) which respectively signify master and slave were also applied in a political sense to signify monarch and subjects. The Persian king was master (δεσπότης), and his subjects were slaves (δοῦλοι).

The political sense then of liberty and freedom, if traced to its source, is founded on the notions of personal liberty as contrasted with personal servitude. He who became free from being a slave in a republic became a member of the state, in which he formerly had no political existence. It is implied by the circumstance of his becoming free that he became a citizen, though positive law, as among the Romans, might limit the degree in which he thereby obtained citizenship. [CITIZEN.] Slavery may and did exist in many states of antiquity which were under monarchical or tyrannical rule; but he who was the slave of an individual in any such state, and obtained his freedom, did not thereby become a citizen, but was merely released from the duty that he owed to his master: he still owed together with others the duty of perfect obedience to an individual monarch or tyrant.

The words liberty and freedom, as political terms, have always been used to express a condition of a people in which they are to some degree at least secured against the arbitrary rule of an individual or of a small number of persons; and the word slavery, in its political sense, is applied to nations in which the mass of the people have not reasonable security for their lives and property against the capricious rule of one man or of a number of persons who form a small minority of the whole.

That which is really meant by political freedom and liberty is nothing more than a form of government which shall in some degree at least secure to the people the enjoyment of life and of their property against the tyranny of one man or of a few. Freedom and liberty then are terms which can only be applied to constitutional governments [CONSTITUTION], and to republics, in the proper sense of that term. There is no political liberty or freedom under any other form

of government, though under a monarchy, when the administration is good, there may be in many respects more personal freedom than there is in a pure democracy. But the essential quality by which political liberty or freedom is distinguished is simply this: the sovereign power is not in the hands of one or of a small minority, but it is either distributed among the whole community or a considerable part of it.

Political liberty does not exist in some civilized nations in Europe, in Prussia for instance. Political liberty does not exist in Russia. In some countries where it does not exist, it is the general opinion that its existence would be a benefit to the whole nation. In other countries the mass of the people are still in such a condition that political liberty could not exist. for political liberty, as already stated, means that the sovereign power must be in the hands of a large number, and they must possess intelligence enough to enable them to exercise and keep the power; but there are nations where the mass of the people are too ignorant to exercise or keep any political power.

The highest degree of political liberty is in a Democracy [DEMOCRACY]; for it is that form of government which is furthest removed from a monarchy. The relationship of monarch and subject is the like relationship to master and slave.

A nation which strives for its liberty strives for a popular form of government, whether it be a constitutional kingly form or a democracy. But Liberty is a specious word, often ill understood; and many who have cried out for liberty have either not considered exactly what it is they want, or they have supposed that liberty would free them from many evils which they consider to be peculiar to a state of political slavery. It is now generally admitted, that in those states where a large part of the population have equal political knowledge with the few, who direct administration, the general interests are best served by this large number participating in the government. Political liberty then, to some extent or degree, is, in many countries, necessary for securing the advantages of good administration. But there are many evils incident to states, which are not due to the want of political liberty; and it is therefore a matter of importance for those who would make changes in government to consider whether the evils of which they complain are owing to the want of political liberty or to other causes.

The notion of political liberty has been based upon the analogy already pointed out between Political Liberty and Personal Liberty; which is a false analogy, though an historical one. Man, it has been assumed, is naturally free. No man is naturally or by nature another man's slave. As no man is naturally a slave, so all mankind have naturally a right to political liberty, and just government arises from the consent of the governed.

On these assumptions rests the American Declaration of Independence: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their joint powers from the consent of the governed," &c.

In this passage Liberty seems to mean the personal status, which is opposed to slavery; and it is on the assumption of the equality by birth and the endowment of all men with certain inalienable rights, that this instrument would found the American title to Political Liberty. It involves the doctrine of the social contract, and assumes, as an historical fact, an origin of governments by consent of the governed.

If theories of government are to be tested by historical facts, it would be consistent with such facts to say, that men are not created equal; that they have not been endowed with liberty, for a large part of them have always been slaves; and that governments have been constituted without the consent of the governed. These are real facts: those assumptions are untruths.

Political liberty rests on no such sorry basis as the Declaration of Independence places it on. That nation which can obtain it and maintain it, is in a better con-

dition than if it were politically a slave, even to the wisest of masters; and when it is able to obtain and maintain that liberty, it is right, or in other words it is for the general interest that a nation should, by force if necessary, alter that form of government which is political slavery.

That liberty promises to be most stable which is the growth of long time and the result of a perpetual struggle between a master and his slaves, in which the master has not ceased to be master all at once, but has always lost something in the contest.

That which is of sudden growth or is the offspring of Revolution, is often premature and always insecure; for liberty so acquired may only be a step from a state of political slavery to a more wretched state; it may be a step from a state of slavery, mild and tolerable, to an anarchy, which of all things is most intolerable.

The words Liberty and Equality often go together, and each of them in so doubtful a sense that one hardly knows what to make of them. Liberty is often used, apparently without people considering what they really mean, in the sense of freedom from restraint. But this kind of Liberty is inconsistent with Political Liberty properly understood; and all men's liberty of action is and must be restrained by positive laws in every well-ordered community. Every law that forbids any act directly or by implication abridges Liberty, and such abridgment is always a universal benefit when the law which so abridges liberty only abridges it in cases where it is useful to all that it should be abridged, and when the law is so framed as to accomplish that object. Equality, in its unlimited sense, can no more exist in any state than perfect individual liberty; for if each man is left to exercise his industry in the best way that he can, without interfering directly with the industry of others, some will be richer, and happier, and wiser than others. The only Equality that can be approached to in a well-ordered state is that Equality which is the result of a good polity, which polity, so far as it is consistent with the universal good, secures alike to every individual in the State the free enjoyment of his industry, wealth, and talents, imposes restraint on all alike, and makes all alike bear the burden of taxation and of the services due to the State. Further, it gives to as large a number as it can consistently with the universal interest an equal share in the sovereign power; but no polity that has ever yet been framed has ever given an equal share in the sovereign power to all the members of a community: such an Equality is impossible.

The Declaration of Rights published by the French National Assembly in 1791 contains the words 'free,' 'equal,' 'rights,' 'liberty,' and many others, all of which are used in a manner as remote from precision as the most confused understanding could suggest. This strange sample of nonsense has been examined and dissected by Bentham in his 'Anarchical Fallacies' (Bentham's Works, part viii., Edinburgh, 1839).

The word Liberties is often used to express those particular constitutional principles or fundamental laws by which the political liberty of a nation is secured. If the British parliament should attempt to abolish the trial by Jury in all cases, or the Habeas Corpus, such an attempt would be called an attack on the liberties of Englishmen.

LIBERTY. The general nature of a liberty, as a portion of the royal prerogative in the hands of a subject, has been already shown under FRANCHISE. Liberties were at first chiefly granted to monastic and other religious establishments, to ease the consciences of the royal grantors, or in testimony of their devotion to the church; and most of the ancient franchises now in existence are derived from an ecclesiastical source. They were afterwards granted as means of strengthening municipal corporations.

Though all Liberties emanate from the royal prerogative, a distinction is usually made between such liberties as have been actually exercised by the crown before the grant to the subject, and such as are said to be created upon their being granted. The former, when by escheat, forfeiture, or otherwise, they come again to the crown, are extinguished by merging in the general prerogative, and cannot

afterwards be regranted as existing franchises; the latter still have continuance for the benefit of the crown or of any subsequent grantee. To the former class belong such privileges as the right to have the goods of felons, &c., waifs, estrays, deodands, and wreck, arising within the lands of the grantee; to the latter, the return of writs; the right of holding fairs and markets and taking the tolls, the right of holding a hundred-court or a court-leet, the privileges of having a free-warren or a legal park, and the like; and in such cases the franchises, even whilst in the king's hands, are exempt from the jurisdiction of the ordinary officers of the crown, and are administered by bailiffs or other special officers, as when in the hands of a subject.

It is, however, only in a very wide and loose sense that franchises of the latter class can be said to be part of the royal prerogative of the crown, inasmuch as the prerogative is limited to the *creation* of such franchises, and they can never be enjoyed by the crown except as claiming them under a subject to whom they have been granted.

The fines paid to the crown for grants or confirmations of liberties are shown by Madox to have formed no inconsiderable part of the royal revenue. In his 'History of the Exchequer' he quotes the particulars of about 200 liberties, granted principally by King John. The men of Cornwall fine in 2000 marks and 200 marks for 20 palfreys estimated at 10 marks each, for a charter for disafforesting the county and choosing their own sheriffs. The men of Brough fine in 20 marks and 5 marks for a palfrey, for a market on Sunday, and a fair for two days. The men of Launceston fine in 5 marks for changing their market from Sunday to Thursday. The burgesses of Shrewsbury fine in 20 marks and 1 palfrey that no one shall buy within the borough new skins or undressed cloth, unless he be *in lot* (in *lotto*), and assessed and taxed with the burgesses.

Many of these franchises having been found to interfere with the administration of justice, the extension of them by fresh grants was frequently the subject of very loud complaints on the part of the commons in parliament, who represented them as prejudicial to the crown, an impediment to justice, and a damage to the people. It appears by the Parliament Roll, that Edward I., towards the close of his reign (in 1306), declared that after the grant which he had made to the Earl of Lincoln for his life, of the return of writs within two hundreds, he would not grant a similar franchise *as long as he lived* to any except his own children, and directed that the declaration should be written in the Chancery, the Gardrobe, and the Exchequer. And in 1347 Edward III., in answer to a strong remonstrance, promised that such grants should not in future be made without good advice.

The form in which the crown granted views of frankpledge [LEET] and other franchises may be seen in the charters granted by King Henry VI. to Eton College, and King's College, Cambridge. (5 *Rot. Parl.*, 51, 97.)

A person exercising a franchise to which he has not a legal title may be called upon to show cause by what authority he does so, by a writ of Quo-warranto, or an information in the nature of a Quo-warranto. And parties disturbed in the lawful exercise of a franchise may recover damages against the disturber in an action on the case.

LICENTIATE IN MEDICINE is a physician who has a license to practise granted by the College of Physicians. There are two classes: licentiates who are authorised to practise in London and within seven miles thereof; and extra-licentiates, who are only privileged to practise in the country at a greater distance from the metropolis. The former class are authorised exclusively by the College of Physicians, but medical graduates of Cambridge or Oxford may practise in the provinces independently of the college license.

LIEN (from the French *lien*, "a tie," or "band"). Various definitions have been given from the bench of this juristical term; but many of them are either incomplete, or too general because of comprehending other rights besides those of lien. The following definition is per-

haps as correct as any that has proceeded from the judges:—"A lien is a right in one man to retain that which is in his possession belonging to another till certain demands of him, the person in possession, are satisfied." (Grose, J., in *Hammond* v. *Barclay*, 2 East, 227.) The definition therefore includes possession by the party claiming the lien; and an unsatisfied demand by him against the owner of the property: but it does not show wherein this right to retain another man's property differs from the right of a pawnee or pledgee.

The determination of what shall be possession sufficient to constitute one element of lien is a part of the general doctrine of possession. It follows from the definition that if the party claiming the lien has not possession, he can have no lien; and as a general rule, if he has voluntarily parted with possession, he has lost his lien. What shall be a parting with possession sufficient to cause a loss of lien is also to be determined by the general doctrine of possession. When possession of the thing is regained, the lien does not revive if the possessor gets the thing back under any circumstances from which a different contract may be implied from that under which he originally obtained the lien.

The defect of the above definition in not showing wherein consists the difference between lien and pledge leads to the consideration of the way in which the right called lien arises. It has been said that "liens only exist three ways; either by express contract, by usage of trade, or where there is some legal relation." (Bayley, J., 1 Ba. and Ald., 582.)

When lien arises by express contract, it is simply mortgage, pawn, or pledge, which are then the more appropriate terms; or it is an agreement (such as may exist in the case of principal and factor) that goods intrusted by one person to another for the purpose of sale, or for some other purpose than pledge, may be retained by the party intrusted with them, as a security for any debt or balance due to him from the other; or it is an agreement that he may retain the proceeds of things intrusted to him to sell, for the same purpose. Pawn or pledge is the delivery of a thing by the owner to the pawnee, to be held and retained by him as security for a debt due from the owner to the pawnee; and it is a matter of express contract. Lien by contract differs from pawning or pledging in this that in the former the retaining the thing is not the purpose for which the goods are delivered by the owner. In pawn or pledge goods are received in order to be retained and kept; in lien by contract they are delivered by the owner for some other purpose, but may be retained as a security for a debt due from the owner to the person to whom he has delivered his goods.

Where two parties have so dealt with one another that one has claimed and the other has allowed the right of lien in respect of any their mutual dealings, lien may exist in all cases of like dealings between them, if there be no verbal or written agreement to the contrary. The acts of the parties are here the evidence of the contract, which is as express as if made by formal words.

The "lien by usage," and "that where there is some legal relation between the parties," belong to one class, and are not distinguishable. They are both included under liens which do not arise from express, but from implied contract. Lien may be defined as *primâ facie* a right accompanying the implied contract. (Lord Eldon.) The "usage of trade" is merely evidence from which contract is to be implied: parties who mutually act in conformity to a custom have in effect, though not in form, made a contract. The term "legal relation" is only another mode of expressing the mutual rights and duties of the same parties, who by their acts have brought themselves within the limits of a custom, and so given evidence of an intention to make a contract. Thus an innkeeper has a lien upon the horse of his guest, which he takes into his stable to feed; a carrier has a lien on the goods which he carries; a tailor who is employed to make a suit of clothes has a lien on them for the price of his labour, if the cloth be given to him for the purpose of making the clothes; and if he furnishes the cloth, and his customer, after the clothes are made, agrees to have them,

and so obtains the property in them, the tailor has still a lien on the clothes, or any part of them, for the whole price. The contract in these and similar cases is for payment of money on one side, in consideration for certain acts to be done on the other; and the delivery by one party of his property to the other, who is to do some act to it, or in respect of it, for money, implies a payment of the money before the owner's right to repossess the thing can commence. Where the owner never had the property or possession of the raw materials, but acquires the property in a thing by his bare assent, as in the case just mentioned, the tailor's prior right of property is converted into a mere right to hold till his debt is paid, or, in other words, instead of property he has a lien. If the owner of a thing sells it, and agrees to receive the price at a future day, he cannot retain the thing till the day of payment, for he has, by the form of his contract, excluded himself from such right to a lien.

Lien, unless there be an express contract, or a custom to the contrary, must from its nature be *particular*, that is, must have reference to a particular transaction and to a particular thing. When it is *general*, that is, where the right to retain a particular thing is not limited to a particular transaction, but exists with respect to other transactions also, there must be express contract, or the dealings of the parties must be such as to create that implied contract which arises from acts done in conformity to well-known usage.

Lien may be lost by voluntarily parting with the thing, by express agreement, or by agreement to be implied from acts. In general, when a person has a lien for a debt, he waives it by taking security for the debt. A solicitor has a lien for his bill on his client's papers which come into his possession in the course of transacting his business; but if he accept a security for his debt, he can be legally compelled to give up the papers. From the expressed agreement for a special security there necessarily arises the implied agreement to give up the thing which is retained, the acceptance of such special security being equivalent to an agreement to receive the debt or demand at a future day, and such agreement as to future payment being inconsistent with the retaining the thing, which act of retaining is equivalent to a claim for present payment. A factor, who has a lien on goods in his possession, both for his outlay on or with respect to those goods and for his general balance. loses his lien if he enters into an express contract for a particular mode of payment. If usage of trade and acts in conformity to it can be considered as evidence of a contract that goods shall be retained by one person as a security for a debt or balance due to him from another, an express contract for securing payment of such debt or balance must be considered as inconsistent with the implied contract, and therefore as determining it.

In Equity, the vendor of an estate, though he has executed a conveyance and parted with the possession without being paid, still has his estate as a security for such part of the purchase-money as is unpaid. This security is generally, though not with strict propriety, called the vendor's lien. The ground of this so-called lien lies in the nature of the contract: one party contracts to give land for money, and the other contracts to give money for land. Until both parties have performed their engagement, the land and the money cannot be considered as exchanged.

Lien, from its nature, is incapable of transfer. Generally a lien gives no right to sell, except by particular custom. Where a factor who has a lien on the goods of his principal, pledges them for a loan of money, this is no transfer of the lien: the goods are a pledge or pawn in the hands of the lender, who may hold them as a security for his advance to the amount of the factor's lien. The lender may have a right to retain the goods as a security to precisely the same amount as the factor; but his right to retain flows from a different source.

The practical questions which arise under the general doctrine of lien are numerous and sometimes not easy of solution; many of them are of the greatest importance to the mercantile community. The chief cases in which lien exists may be referred to the law of Agent, Attorney, Bailment, Carrier, and Factor. Mon-

tagu's work 'On Lien' contains a collection of a considerable number of particular instances.

LIEUTENANT is an officer who discharges the duties of a superior in his name and during his absence; and who acts immediately in subordination to him when he is present.

Thus, in military affairs, the lieutenant-general and the lieutenant-colonel respectively superintend the economy and the movements of the army and the battalion under those who hold the chief command. The lieutenant of a company is also immediately subordinate to the captain, in whose absence he has the same powers. In the British service the lieutenants of the three regiments of foot-guards have the rank of captain: in the royal regiment of artillery, the royal corps of engineers and marines, and also in the fusiliers and rifle brigade, there being no ensigns, the subaltern officers are distinguished as first and second lieutenants.

In Ward's 'Animadversions of War' (1639), it is said, 'A lieutenant is an officer of high credit and reputation, and he ought in all respects to bee well indoctrinated and qualified in the arts military, and not inferior in knowledge to any officer of higher authority; for an unskilful captaine may better demeane himselfe with an experienced lieutenant than an unskilful lieutenant can fadge with a skilful captaine.'

The price of a lieutenant's commission is, according to the present regulation,—

	£		s.	d.
Life-Guards	1785	daily pay	10	4
Horse-Guards	1600	"	10	4
Dragoons .	1190	"	9	0
Foot-Guards	2050	"	7	4
Line . . .	700	"	6	6

A lieutenant in the royal navy takes rank as a captain in the army, and the number appointed to ships of war varies with their rate. A ship of the first rate has eight lieutenants, besides supernumeraries; those of the second, third, &c. rates, have respectively one less than the number appointed to the preceding rate; so that a sixth-rate vessel has three: sloops and bomb-vessels have only two. The monthly pay of a first-lieutenant of seven years' standing, in ships of the three first rates, and that of lieutenants commanding gun-brigs, schooners, and cutters, is 11*l.* 10*s.* The monthly pay of other lieutenants, for ships of all rates, is 9*l.* 4*s.*

LIEUTENANT-GENERAL. [GENERAL.]

LIEUTENANT, LORD and DEPUTY. [LORD-LIEUTENANT.]

LIFE ESTATE. [ESTATE.]

LIFE INSURANCE, OR REVERSION. By a reversion, in the widest sense, is meant a right of property the enjoyment of which is to commence at some future period, fixed or depending on contingencies, and is to continue either for ever or during a term either fixed or depending on a contingency: anything in fact which is to be entered upon, or which may be entered on at a future time, is a reversion in books which treat on the value of property. The legal sense of the word is more restricted.

Thus an assurance of 100*l.*, or a contract to pay 100*l.* at the death of a given individual, is 100*l.* in reversion to the executors of that individual. Our object in this article is to treat of this most common species of reversionary contract, life insurance, or assurance.

The value of a reversion depends in a very easy manner upon the value of the corresponding annuity; that is, any given sum, say 100*l.*, to be received *when* a given event arrives, depends for its value upon that of 100*l.* a year to be received *till* the event arrives. Suppose, for example, that money makes five per cent., and that an annuity, say upon a life, is worth fourteen years' purchase, upon the method of calculation explained in ANNUITY, p. 141. That is, 100*l.* paid a year hence, and again two years hence, and so on as long as the life lasts, is now worth 1400*l.* Required the value of 100*l.* to be paid at the end of the year* in which the life drops. We must now reason as follows:—Suppose a perpetual annuity of 100*l.* a year is to be enjoyed by A during his life and by his legatees after him. By hypothesis A's portion is now worth

* Assurance companies usually pay in a few months after proof of death, which gives a trifling advantage to the assured, not worth considering in a very elementary statement of the question.

1400*l.*, and (money making five per cent.) the annuity for ever is worth twenty years' purchase, or 2000*l.*; consequently, the legatee's interest is *now* worth 2000*l.* − 1400, or 600*l.* But at the end of the year of death the legatee will come into 100*l.* current payment, and a perpetual annuity worth 2000*l*; for the remainder of a perpetual annuity is also a perpetual annuity: his interest will *then* be worth 2100*l.* Hence we have ascertained that 2100*l.* at the end of the year of death is now worth 600*l.*: and the rule of three then gives the value of any other sum: thus 100*l.* at the end of the year of death is now worth $\frac{600}{21}$*l.*, or 28*l.* 11*s.* 5$\frac{1}{7}$*d.* Hence the following easy

RULE.—To find the value of a given reversion, subtract the value of the same annuity from that of a perpetual annuity, and divide the difference by one more than the number of years' purchase in a perpetual annuity: or multiply the excess of the number of years' purchase in a perpetual annuity over that in the life annuity by the reversionary sum, and divide as before.

Next, to find what premium should be paid for the reversion. A premium differs from an annuity in that a sum is paid down, and also at the end of every year: consequently it is worth one year's purchase more than an annuity. In the preceding question, the annuity was worth fourteen years' purchase; consequently the premium now is worth fifteen years' purchase. But the present value of all the premiums is to be also the present value of the reversion, or 28*l.* 11*s.* 5$\frac{1}{7}$*d.*, whence the premium should be the fifteenth part of this, or 1*l.* 18*s.* 1*d.* Hence to find the premium, divide the present value of the reversion by one more than the number of years' purchase in the life annuity. But when, as most commonly happens, the premium is wanted without the present value, the following is an easier

RULE.—Divide the reversionary sum separately by one more than the number of years' purchase in the perpetual annuity, and one more than the number of years' purchase in the life annuity: the difference of the quotients is the premium required. Thus, if in the preceding example we divide 100*l.* by 20+1 and by 14+1, or by 21 and 15, we find 4*l.* 15*s.* 3*d.* and 6*l.* 13*s.* 4*d.*, which differ by 1*l.* 18*s.* 1*d.* the same as before.

The life we have been tacitly considering, when we talked of an annuity being worth fourteen years' purchase, at five per cent., is one of about thirty-six years of age. The first impression must be, that the proposed premium is ridiculously small. Make it up to 2*l.*, and it will be fifty years before the premiums reach 100*l.* Some such consideration must have moved the law officers of the crown in 1760, when they refused a charter to the Equitable Society, then charging a premium of about 4*l.* at the age of thirty-six, on account of the lowness of their terms. But it is to be remembered, that those who receive the premiums are to invest them immediately at five per cent., and are to invest the interest, thus making compound interest; persons aged thirty-six live, one with another, about thirty years, which is sufficient time for the premiums, with their interest, to realize 100*l.* for each person, one with another.

We now show the manner in which a simple result of calculation answers its end. To simplify the case, suppose an office starts with 5642 individual subscribers, each aged thirty years, the mortality among them being that of the Carlisle Table. The bargain is for a short assurance, as it is called, of twenty years, and of 1000*l.*; that is to say, the executors of each one who dies within twenty years are to receive 1000*l.* at the end of the year of death. Money makes three per cent. once a year. According to the table then, there are 57, 57, 56, &c., deaths in the successive years, and the following is the result, the proper premium being calculated at 11*l.* 12*s.* 3$\frac{1}{2}$*d.* each person, or more exactly 11,614*l.* 16*s.* for 1000 persons. It is supposed that there are no expenses of management. At the outset the office receives 65,530*l.* from the 5642 persons assured: this is immediately invested at three per cent., and yields 1966*l.* by the end of the year, making 67,496*l.* But at the end of the year, the claims of the executors of fifty-seven persons who have died during the year are to be satisfied, which requires a disbursement of 57,000*l.*, reducing the

society's accumulation to 10,496*l.* The contributors who are left, 5585 in number, now pay their second premiums, 64,869*l.*, so that, these being immediately invested, the company has 75,365*l.* at interest during the second year. This yields 2261*l.*, so that by the end of the year 77,626*l.* is accumulated. Then comes the demand of 57,000*l.* on behalf of fifty-seven contributors deceased during the year, which reduces the accumulation to 20,626*l.* This is more than it was at the same time last year. In this way the company goes on, accumulating to an amount which would lead a person unacquainted with the subject to conclude that the premium must be too large; in fact, ten years give an accumulation of 91,809*l.* But now the state of affairs begins to change; the contributors have been diminishing, while the claims have been increasing, until the yearly incomings no longer equal the outgoings. The accumulations then come in to make good the difference in such manner that by the time the remaining contributors come to be fifty years of age, and the claims of sixty-one who died in their fiftieth year have been satisfied, there only remains 8*l.* of the 91,809*l.*; and this 8*l.* is merely the error arising from omitting shillings, &c., in the calculation. Something of the same kind must take place in every office which dies a natural and solvent death; the only difference being that, when new business ceases, instead of a number of contributors all of the same age, and under similar contracts, both ages and contracts vary considerably.

There are certain tables which are variously named (sometimes after Mr. Barrett, the inventor, sometimes after Mr. Griffith Davies, the improver; sometimes after D and N, letters of reference used in them), but which we call commutation tables. They are described in the "Treatise on Annuities," in the *Library of Useful Knowledge*, and a copious collection is given: also in an article in the 'Companion to the Almanac' for 1840. They very much exceed in utility those which preceded them.

An assurance company is a savings' bank, with a mutual understanding, presently to be noticed, between the contributors. To make out this proposition, let us suppose that A borrows money, and insures his life for the amount as a security to his creditor. For this he has to pay a premium. If life were certain, the office of the company would be to receive and invest these premiums, which would be calculated in such a manner as with their interest to amount to a sum sufficient to discharge the loan in a settled time. At the end of this time the creditor (who has been all this while receiving interest for his money from A) calls upon A to make his claim upon the office, and repay the loan with the money received. If such an office existed, life being certain, the rationale of the proceeding would be that the creditor, though tolerably confident of A's power and willingness to make any yearly payment, whether of interest or instalment, will not trust him steadily to lay by and improve yearly instalments, but requires that he should make his instalments payable to third parties, who are engaged not to return them on demand until they amount to a sum sufficient for the discharge of the debt. Such an office certainly could not exist, on account of the uncertainty of individual life. At soon, however, as it is known that the duration of masses of individuals can be calculated with tolerable accuracy, there is a remedy for the individual uncertainties. Let a large number of debtors, similarly situated with A, agree to be guarantees for one another; that is, let each of them pay during his life not only his own instalments, but such additional sums as will provide the means of meeting the deficits of those who die, and the savings' bank thus constructed will become an assurance office. Of course, it matters nothing whether these debtors pay their instalments to a person agreed on among themselves, or go to a company which undertakes the management of such concerns. And again, it makes no difference whether the instalments are for liquidation of debt, or to accumulate a provision for widows and children. We have taken the case of debtors, because in such a case an office looks more like a mere indemnity-office than when its contributors enter for the benefit of their families:

still however, in the former case, it is evident that the premiums are partly instalments of debts, partly sums intended to make good the deficiency of the life-instalments of those who die.

Let us now suppose a company to be formed for the simple purpose of assuring lives. Their business is to invest the premiums of those who assure with them; their receipts will consist entirely of current premiums and interest on the investments of the old ones; and their outgoings will contain expenses of management, payment of claims, purchase of their own policies, and (possibly) losses by bad investment.

There is one question which is generally settled at the very outset, namely, whether the company is to be what is called mutual, proprietary, or mixed.

A mutual company is one in which the members stand bound to each other, and constitute the company themselves. In such a company no capital is, generally speaking, raised at the outset, except a small sum for necessary expenses at starting. This, however, is not necessarily the feature of a mutual company; for if its members choose to constitute themselves an investment company as well as an assurance company, they may, without losing their *mutual* character, require every assurer to be also a shareholder. In a mutual company the profits of course are divided among the assured.

A proprietary company is one in which a body of proprietors raise a capital and pledge it for the payment of claims, in case the premiums are not sufficient: for this security they receive, in addition to the interest of their own capital, the profits of the assurance business. It has long been proved that, with proper tables of premiums, and a fair amount of business at starting, this capital is an unnecessary security; and the only reason which could now make such an office desirable would be the lowness of its premiums. Of course it matters nothing to the assured how they are paid, as long as they are paid; the capital may be diminished, but the assurer cares for nothing except its exhaustion before his turn comes. This must be the sole consideration with a person who is tempted by low premiums to a purely proprietary office: the nominal capital signifies nothing; it is upon the amount of assurance to which it (with the premiums) is pledged that the solvency of the office depends. Generally speaking, however, we believe it will be found that the purely proprietary offices have not allowed themselves to run much risk.

A mixed office is one in which there is a proprietary company, which does not take all the profits, but a share; the rest being divided among the assured. The only good effect of the capital upon the condition of the assured in such a company is this:—that the directors, having fixed capital as well as premiums, may justifiably seek for investments which a mutual company must avoid. Having the capital to make good purely commercial losses, they may perhaps attempt to get a higher rate of interest, and of course take more risk of loss; the assured, who are sharers in the whole of the profits, since the profits of premiums and profits of original capital are not distinguished, come in for their share of the extra profits of the capital. But no such attempt at gaining higher interest by secondary securities should be made until a sum sufficient (with future premiums) to meet all claims is invested in the very safest securities which the state of society offers.

There is much confusion in the ideas of many persons about interest, arising from not distinguishing between interest and other returns. Perhaps it would be best to retain the term interest in its general loose signification, and to subdivide it, for accuracy, into pure interest or net profit, debt-insurance, and salary.

In the construction of a table of premiums, three points must be left to the judgment of the constructor,—the rate of interest, the table of mortality, and the addition to be made for expenses of management and probable fluctuation, or discrepancy between the predictions of the table and the events which actually arrive. The third point would not arise if, as was once the case, the table of mortality made life much worse than the actually prevailing state of things shows it to be. Security against adverse fluctu-

ation is thus taken in the choice of the table; and this was done by the older offices, which chose the Northampton Table—by the Equitable, for instance. But we hold decidedly by the method of choosing a true table, and augmenting the premiums given by it as a safeguard against fluctuation; and for this reason, that wrong tables are usually unequally wrong, making different errors at different ages, and thus augmenting different real premiums by different per-centages.

According to the Carlisle Table (which we prefer for the purpose), of 5642 persons alive at the age of 30, 3018 are alive at 65, whence the chance of living till the second age is 3018 ÷ 5642 or ·5525. Now by applying calculation to this question, we find that an office which would have practical certainty (thousands to one for it) that, as far as this instance is concerned, the office should not be injured by adverse departure of events from tables, must make provision for twenty-five deaths, at least, in the period above-mentioned, more than the tables predict, out of 250 persons at the commencement. And this even on the supposition that the table itself can be certainly reckoned upon as representing the law of mortality of the whole insurable population. It would be a very long process indeed to apply calculation in detail, so as to form a well supported idea of the proper amount of precaution against fluctuation; and the question is mixed up with another, to which we proceed.

The rate of interest to be assumed is an element which requires the greatest caution. It must be a rate which can actually be made, and therefore prudence requires that it should be something below that which may reasonably be looked for. To show how powerful an agent it is, we shall repeat the example already given, of the 5642 insurers for twenty years, on the supposition that the office which charges as for 3 per cent. finds itself able to make 3½ per cent., and it will appear that the office leaves off with an accumulation of 15,441*l.* nearly; and if it be lucky during the first years, it may be said to be safe against any fluctuation for which there is an even chance, by the increase of interest alone.

Take what amount of precaution we may, an office must, at first starting, depend upon something either of capital or guarantee. Even a mutual office must raise something at the outset. Tables must be constructed with very large additions to the calculated premiums, which are to meet the very earliest contingencies alone; indeed it is difficult to say what addition would be too large. But this point it is unnecessary to insist on, since we can hardly suppose it possible that any set of men would found an office with no resource except premiums from the very commencement. Supposing proper precautions to be taken, we imagine that an addition of 25 per cent to premiums calculated from the Carlisle Tables at 3 per cent. per annum, is sufficient to place a mutual office upon a sound footing, and to give a very great prospect of a return in the shape of what is called profit. It never has been found that an office charging at this rate has been without surplus of some kind.

This surplus has been called by the inaccurate name of profit, whereas it is really that part of the security against fluctuation of interest and mortality which has been found to be unnecessary. In mutual offices it is to be returned to the assured in an equitable manner; in purely proprietary offices, it is really profit to the proprietors, whose capital has yielded them the ordinary interest, since by hypothesis, none of it has been necessary to meet claims, and they therefore share among themselves the residue of the premiums. It is impossible to avoid this surplus in a well-constituted office, for the mathematical line which separates surplus from deficiency cannot be expected to be attained, so that those who would not have the latter must take care to have the former. It is usual among the offices to adopt a plan for increasing this surplus, which we will now describe.

Two rates of premiums are adopted, the one less than the other. Those who pay the higher rate are to have a share of the surplus: those who pay the lower rate have nothing but the nominal sum for which they assure. If the table of lower rates yield a surplus (which it is supposed it will do), that surplus goes to augment

the final receipts of those who assure for profits. This scheme may be very well practised by a proprietary company, or by an old mutual company, but whether it is a good plan for a young mutual company to adopt, may be a question.

The public has been much misled by a notion that assurance companies must accumulate large profits, and the Equitable has been constantly cited as the proof. Now, all who would form an opinion on this subject must remember that the circumstances of the Equitable are very peculiar. It realized large accumulations, in the first instance, by an excess of caution commendable at the time, but since proved to be unnecessary. Of late years, newly assured parties are allowed to share in these accumulations, on condition that they are first assured in the office for a large number of years, taking the chance of receiving less than their premiums are really worth. This however is not the question here; we merely stop to remind the reader who is disposed to form a general opinion about offices, because the executors of A, B, and C receive two or three times the sum for which those persons were nominally insured, that this only happens because D, E, and F, who died during the days of a caution which has since been shown to be unnecessary, did not get their share of the then existing surplus.

The expenses of management are relatively trifling when the office has obtained a large amount of business, but they bear heavily on young offices during the first years.

The division of the profits (so called), that is, the method of returning to the assured the surplus of their premiums, with their accumulations of interest, has been the subject of much discussion. Offices have adopted very different modes of proceeding in this respect: some keep this surplus for the older members; some divide it by addition to the policies made annually, or at periods of five, seven, or ten years; some apply it in reduction of premiums as fast as its value is ascertained. Most, or all, of the methods followed by the offices seem to be fair, that is, they make the chance of surplus the same for one member as for another, at least of those who enter at the same age: if there be any thing inequitable, it arises when the premiums are disproportioned at different ages, so that the surplus is differently levied upon different classes of members. Leaving this however, we shall proceed to enquire what may be the probable amount of surplus in an office charging premiums made from the Carlisle Table at three per cent., with twenty-five per cent. added, taking the most favourable suppositions. Let the mortality be no greater than that in the table, let there be no expenses of management, and let the office be able to net four per cent. compound interest. Then we find that the office is in reality charging for the following sums, under the name of 100*l.*; that is to say, all the preceding suppositions being correct, the office might undertake to pay the following sums instead of the 100*l.* minimum which they do really guarantee. The sums are only roughly put down, within a pound or thereabouts.

Age.	£.	Age.	£.	Age.	£.
20	166	35	157	50	148
25	163	40	155	55	144
30	160	45	152	60	141

There is an inequality here which arises from the supposition of the office gaining a greater interest than was supposed in its tables; and it is obvious that the young assurer must make that excess of interest more beneficial to the office than the old one. Consequently where an office realizes some of its surplus by excess of interest, there is equity in giving the one who entered young somewhat more than the one who entered later in life. But this has never been the principle on which any office made its divisions: some distinguish those who have been a long time in the office from those who enter newly, and the greater number of those so distinguished must have entered younger than the greater number of the undistinguished; but the intention of the office has no reference to age at entry, but only to time of continuance.

The true method of determining the actually existing surplus must have some connection with that which would be followed if the company wished to break up, dividing its assets fairly among the

assured. Let us suppose the stock of the company, all that it actually has or could realize, to be worth half a million, and that the premiums which the existing contributors would pay are valued at another half million, while the claims of these contributors are valued at 750,000*l.* Consequently there is a million to meet 750,000*l.*, or 133⅓*l.* can be given for 100*l.* Now suppose that instead of breaking up, the office wishes to know how much it can afford to give in payment of a claim of 100*l.* The first question is, how did this surplus arise?—the office has in possession or prospect 250,000*l.* more than what is estimated to be absolutely necessary. If this surplus really arose out of the natural operation of the premiums, &c., it is clear that the office is now in a condition to pay 133⅓*l.* for 100*l.* Supposing this done for the current year, the valuation of the next year will point out what alteration, if any, is necessary. This mode of division is the safest in the long run, because any excess in one year will be compensated in future years. Another mode is to divide the surplus of 250,000*l.* among the existing policies, in equitable proportions; and a third is to consider it as advance of premium on the part of the existing contributors, and to diminish their future premiums as if they had actually made such advance. It is not however our present purpose to extend an article already longer than we had intended it to be, by entering into a lengthened explanation on this point.

The benefits of life assurance (which is in reality a large combination of small sums for the purpose of beneficial investment, with a contract among those who invest that the inequalities of life shall be compensated so that those who do not live their average time shall be sharers in the good fortune of those who exceed it), and the moral considerations which should induce every friend of his species to promote and extend it, are of course not the particular motives which actuate the founders of such offices, though no doubt they have them in the same degree as others. To bring business to a particular office becomes their interest and their object; and every possible mode of investment has been held out to engage the attention and suit the particular objects of the assurer. To this of course, in general, we do not object: for instance, when a company proposes twenty different kinds of assurances, it is enough for the public that the terms of each kind are sufficiently high and not too high. But it sometimes happens that among the proposals which are held out for the assurer's acceptance are to be found some which altogether militate against the moral principles of assurance; these are prudence, foresight, and present self-denial for the attainment of ultimate prosperity and of present security against the chances of life. When an office announces that it is willing to leave a part of the premium in the assurer's hands, on his paying interest for it in advance, the office in the meanwhile holding the policy as a security,—what is it but enticing a person to assure for more than he can afford to do, and to borrow money for the purpose of paying the premiums? The office may, with caution, make itself secure; but it throws upon the customer the strong probability of future disappointment. When the time comes for thinking of the repayment of the advances which the office has virtually made, the assurer will frequently find himself obliged to sell that policy to the office which he had counted upon for the benefit of his family. Now out of the purchase money must be deducted the sums in arrear to the office (upon which interest has always been paid in advance); and when the assurer comes to put his balance against what he has actually paid, he will see that he never did a more imprudent act. The office is not to blame for anything but having thrown the original offer in his way; they have only lent him money on the same terms as they would have lent it to others; and they may say, and truly, that it was his own fault if he engaged in an imprudent speculation. But is it not then a fault to entice others to imprudence, knowing how much more easily men are induced to be imprudent than to be prudent?

LIGAN. [FLOTSAM.]

LIGHTHOUSE. [TRINITY HOUSE.]

LINEAL DESCENT. [DESCENT.]

LINEN, cloth woven with the fibres

of the flax-plant (*Linum usitatissimum*), a manufacture of so ancient a date that its origin is unknown. Linen cloths were made at a very early period in Egypt, as we see from the cloth wrappings of the mummies, which are all linen. It appears also that linen was, in the time of Herodotus, an article of export from Egypt. (ii. 105.)

After the separation of the ligneous fibres of the plant, the distaff and common spinning-wheel were employed for the preparation of the thread or yarn, and the hand-loom generally, in its simplest form, was used for weaving the cloth. The first attempts to adapt the inventions of Hargreaves and Arkwright to the spinning of flax were made at Leeds within the present century. Mill-spun yarn is now universally employed by the linen-weavers of this kingdom for the production of the very finest lawn, as well as of the coarsest linen; and the use of the power-loom has been adopted for weaving all but the very finest and most costly fabrics. The consequences of these improvements have been to render this country independent of all others for the supply of linen yarn of every quality, and to diminish in a most important degree the cost of linen fabrics; so that British yarns and cloths are now profitably exported to countries with which the manufacturers of Great Britain and Ireland were formerly unable to compete, and against which they were "protected" in the home market by high duties on importation.

The growth of the linen manufacture in Ireland is ascribed to the legislative obstruction raised in the reign of William III. to the prosecution of the woollen manufacture in that part of the kingdom, which it was alleged interfered prejudicially with the clothiers of England. The linen weavers were at the same time encouraged by premiums of various kinds distributed by public boards authorised by parliament, and by bounties paid on the exportation of linen to foreign countries.

In 1835 the quantity of linen shipped from Ireland was estimated at 70,209,572 yards, the value of which was 3,730,854*l.* (*Report of Irish Railway Commissioners.*)

The linen manufacture was introduced into Scotland early in the last century, and in 1727 a board of trustees was appointed for its superintendence and encouragement. Notwithstanding this and the further stimulus afforded by premiums and bounties, the progress of the manufacture in that part of the kingdom was for a long time comparatively unimportant. At Dundee, the great seat of the Scotch linen trade, there were imported in 1837, 30,740 tons of flax, besides 3409 tons of hemp, and there were exported from that place 641,938 pieces of different qualities of linen, sail-cloth, and bagging, besides a quantity, computed to be as great, retained for home use.

The bounties allowed on the shipment of linens were graduated according to their quality and value, and ranged from a halfpenny to a penny halfpenny per yard. After being gradually diminished for some years these bounties were finally discontinued 5th January, 1832. The manufacture has not suffered from this circumstance, while the country has saved from 300,000*l.* to 400,000*l.* per annum formerly paid to enable foreigners to purchase our linen at prices below the cost of production.

The number of flax factories at work in different parts of the kingdom, according to returns made by the inspectors of factories in 1835 was 347, of which 152 were in England, 170 in Scotland, and 25 in Ireland. In 1843 there were 392 flax factories in the United Kingdom, and the number of persons employed in them was 43,487. According to the census of 1841, there were in Great Britain 85,213 employed in the linen manufacture in its various branches.

Linen is next in importance to cotton and woollen goods as an article of export. The quantity of linen exported from the United Kingdom in the five years from 1828 to 1832, averaged 59,734,219 yards annually, and in the five years from 1833 to 1837, the annual average was 69,911,799 yards. The quantity of linen yarn exported in the six years from 1832 to 1837 was as under:—

	lbs.
1832 . .	110,188
1833 . .	935,682

		lbs.
1834	. .	1,533,325
1835	. .	2,611,215
1836	. .	4,574,504
1837	. .	8,373,100

The quantities of manufactured linen and linen yarn exported in the following years was as under:—

	Linen, yards.	Yarn, lbs.
1838	77,195,894	14,923,329
1839	85,256,542	16,314,615
1840	89,373,431	17,733,575
1841	90,321,761	25,220,290
1842	69,232,682	29,490,987
1843	84,172,585	23,358,352

The declared value of the exports of linen and linen yarn in 1843 and 1844 was as follows:—

	1843. £.	1844. £.
Linen manufactures	2,803,223	3,055,243
Linen yarn . .	898,829	1,021,796
	3,702,052	4,077,039

The total value of the exports of linen to France in 1828 amounted to no more than 7228*l.*, the value of 64,212 yards of linen; whereas in 1842 that country took from us 8,586,667 yards of linen, and 22,202,292 lbs. of yarn, valued together at 1,019,694*l.* The exports to the United States of North America amounted in 1836 to 39,937,620 yards, and in this and the previous year the quantity amounted to nearly one-half the whole exports of linen. The quantity sent to the United States has fallen off one-half or more within the last few years.

LIST, CIVIL. [CIVIL LIST.]

LIVERY. [FEOFFMENT.]

LORD ADVOCATE. [ADVOCATE, LORD.]

LORD KEEPER. [CHANCELLOR.]

LORD-LIEUTENANT. It was formerly usual for the crown, from time to time, to issue commissions of array, requiring certain experienced persons to muster and array the inhabitants of the counties to which such commissioners were sent. They were directed to put into military order those who were capable of performing military service, and to distrain such as were not qualified to serve, but were possessed of real or personal property, to furnish armour to their more vigorous countrymen; and they were to erect beacons when necessary. The form of these commissions, after much complaint, was settled by statute, and may be seen at length in the Parliament-rolls of 5 Hen. IV., 1403-4, vol. iii. p. 527.

In the sixteenth century these commissions of array appear to have generally given place to commissions of lieutenancy, by which nearly the same powers as those of the old commissions of array were conferred on certain persons as standing representatives of the crown for keeping the counties for which they were appointed in military order. In 1545 a commission "de arraiatione et capitaneo generali contra Francos" issued to the duke of Norfolk, constituting him the king's *lieutenant*, and captain-general of all captains, vice-captains, men-at-arms, armed men, archers, and all others retained or to be retained against the French, in the counties of Essex, Suffolk, Norfolk, Hertford, Cambridge, Huntingdon, Lincoln, Rutland, Warwick, Northampton, Leicester, and Bedford. A similar commission issued to the duke of Suffolk for the counties of Kent, Sussex, Surrey, Hants, Wilts, Berks, Oxford, Middlesex, Bucks, Worcester, and Hereford, and London; and to John Russell, knight, Lord Russell, keeper of the privy seal, for the counties of Dorset, Somerset, Devon, Cornwall, and Gloucester. (Rymer.)

These officers are however spoken of by Camden, in the reign of Elizabeth, as extraordinary magistrates, constituted only in times of difficulty and danger, which was the case with commissioners of array, as appears from the recitals in their commission.

The right of the crown to issue commissions of lieutenancy was denied by the Long Parliament, and this question formed the proximate cause of the rupture between Charles I. and his subjects. Upon the Restoration the right of the crown to issue such commissions was established by a declaratory act, 14 Charles II., cap. 3.

The authorities and duties of the lord-lieutenant and of his temporary vice-lieutenants, and of his permanent deputy-

lieutenants, have latterly been fixed and regulated by the militia acts. [MILITIA.]

LORDS, HOUSE OF, one of the constituent parts of the Parliament of the United Kingdom. [PARLIAMENT.] The other is the House of Commons.

The persons who sit in the House of Lords are the Lords Spiritual and Lords Temporal.

The Lords Spiritual are the two archbishops and twenty-four bishops of the English Church, and one archbishop and three bishops of the Irish Church. Before the Reformation, when the monastic establishments which abounded in England were suppressed, the superiors of many of them, under the names of abbots and priors, sat as Lords Spiritual in this assembly. In those times the Lords Spiritual equalled, if they did not outnumber, the Lords Temporal who sat at any given time in Parliament; though now they form only about one-thirteenth of the persons composing this assembly. Six more bishops were added when the abbots and priors were removed.

The Lords Temporal are all the peers of England, being of full age, and not incapacitated by mental imbecility; sixteen representative peers of the Scottish peerage, and twenty-eight representatives of the Irish peerage. The number of the Scotch and Irish representative peers is fixed; but the number of peers of England by the acts of union with Scotland and Ireland in 1707 and 1800 respectively, is perpetually varying, and depends upon the casualties of minorities, and on the will of the king, who can make any man a peer.

The component parts of this assembly may be thus classified:—1. Persons sitting there in respect of offices held by them. Such are the spiritual lords of England. 2. Persons who sit in right of inheritance of a dignity of peerage. 3. Persons who have been created peers. 4. Hereditary peers of Scotland (for there can be no creation of peers of that part of the United Kingdom) elected by the whole body of the Scottish peerage to represent them in parliament, at the beginning of every parliament. 5. Hereditary or created peers of Ireland, elected by the whole body of the Irish peerage; they sit for life, and vacancies are supplied as they occur. And 6. Spiritual lords of Ireland, who sit in turns according to a cycle established by 3 Wm. IV. c. 37. The great body of the house however consists of hereditary Lords Temporal of England, under the several denominations of dukes, marquesses, earls, viscounts, and barons. Each of the individuals of these ranks has an equal vote with the rest; but they sit in the house in classes, and according to their precedency.

The only material changes which have been made in the constitution of this assembly in the long period of its existence have been: 1. The supposed limitation of the right of all holding lands in chief of the crown to sit therein, by King Henry III. after the battle of Evesham. 2. The removal from it of representatives of the counties, cities, and boroughs, who are supposed to have formerly sat with the lords, and the placing them in a distinct assembly, called the House of Commons. 3. The reduction in the number of the Lords Spiritual, by the suppression of the monastic establishments. 4. The introduction of the Scottish representative peers. And 5. The introduction of the Irish bishops and the Irish representative peers.

This house may be traced to the very beginning of anything like an English constitution. It is in fact the *magnum concilium* of the early chronicles. The bishops are sometimes said to sit there in virtue of baronies annexed to their respective offices; but it is questionable whether baronies are attached to the bishoprics of the new creation by Henry VIII.; and at best it is but a legal fiction, it being evident from the whole course of history that the bishops formed, as such, a constituent part of such assemblies in the Saxon times, and were, as such, among the chief advisers of the king. One of the last acts of King Charles I., before he finally left London and disconnected himself from the Parliament, was to give the royal assent to a bill for removing the bishops from Parliament. The bishops were restored after the return of Charles II., 1660.

A question has been raised whether, as the Lords Spiritual and the Lords Tem-

poral, though sitting together, form two distinct *estates* of the realm, the concurrence of both is not requisite in any determination of this house, just as the consent of the two houses of Parliament is necessary to every determination of Parliament. But it is now understood that the Lords Spiritual and Lords Temporal are one body, whose joint will is to be collected by the gross majority of voices; and statutes have been made in the absence of all the Spiritual Lords.

The House of Lords has two distinct functions: the legislative and the judicial.

In its legislative character, every new law, and every change in the existing law, must have the consent of a majority of this house, as well as of a majority of the House of Commons.

In its judicial character, it is a court for the trial—1. Of criminal cases on impeachment by the House of Commons; 2. Of peers on indictments found by a grand jury; 3. For the hearing and determining of appeals from decisions of the Court of Chancery; 4. For the hearing and determining of appeals on writs of error to reverse judgments in the Court of King's Bench; and 5. In hearing and determining appeals from the supreme courts in Ireland and Scotland. The house can require the attendance of the judges of the superior courts of law, to assist it in the discharge of its duties; which is sometimes done.

A few points in which the House of Lords differs from the lower house of Parliament remain to be noticed. In the chair of the house sits the lord high chancellor of England. When the king goes to Parliament he takes the throne in the House of Lords, and the Commons are summoned to attend him there to receive the communication of his will and pleasure. The royal assent to bills, whether given by the king or queen in person, or by a commission appointed by the king or queen, is given in the House of Lords. All bills which affect the rights and dignities of the peerage must originate in that house. . The members of the House of Lords have a right of voting on any measure before the house by proxy, but the proxy must be a member of the house: and, lastly, they have the privilege of entering on the journals of the house their dissent from any measure which has received the sanction of the majority, with the reasons for that dissent. This is called their protest. For further information see PARLIAMENT.

LORDS JUSTICES. Our kings have been, ever since the Conquest, in the habit of appointing, as occasion required, one or more persons to act for a time as their substitutes in the supreme government either of the whole kingdom or of a part of it. When William I. returned to Normandy the year after the Conquest, he left his half-brother Odo, Bishop of Bayeux, and William Fitzherbert, to be *Custodes Regni*, or guardians of the realm, during his absence; and similar appointments were very frequent under the early Norman and Plantagenet kings. There is a commission of a *Custos Regni* in Rymer of the reign of John. One by Edward I. to the Earl of Pembroke describes the powers of the office in terms which imply that it had long been familiar, as extending over all those things which pertain to the said custody (*quae ad dictam custodiam pertinent*); and the same words are common in subsequent commissions. And down to the present time similar officers have been appointed under various names, and with more or less extensive powers according to circumstances. Protector, lieutenant, or locum tenens, regent, have been among the other names by which they have been known. Regents and councils of regency, during the nonage of the king or queen, have been sometimes named by the preceding possessor of the crown; but in modern times such arrangements have been usually made by statute. Coke remarks (4 *Inst.* 58) that the methods of appointing a guardian or regent have been so various, that "the surest way is to have him made by authority of the great council in parliament."

The most familiar case of the appointment by the crown of a representative to exercise the supreme executive power, not in a colony or dependency, is that of the appointment of a governor for Ireland, who has commonly borne the name of the Lord Lieutenant or the Lord De-

puty; or of a council of government composed of Lords Justices.

The governor-general of Ireland under the crown has been styled at different times Custos (keeper or guardian), justiciary, warden, procurator, seneschal, constable, justice, deputy, and lieutenant. Viceroy is a popular name of modern introduction. Formerly, upon the avoidance of the king's lieutenant for Ireland by death or otherwise, the privy council there was authorised to elect a successor, with the restriction that he should be an Englishman and no spiritual person, who held office till the king appointed another. The ancient powers of this officer were almost regal; he performed every act of government without any previous communication with England; and when he left the country he even appointed his own deputy. From about the time of the Revolution, however, till after the commencement of the reign of George III., the lord-lieutenant resided very little in Ireland; in several instances the person appointed to the office never went over; in other cases he went over once in two years to hold the session of parliament; and the government was very often left in the hands of lords justices, without a lord-lieutenant at all. In modern times the appointment of lords justices for Ireland has only taken place on the occasional absences of the lord-lieutenant, and during the interval which has sometimes occurred between the demise of one lord-lieutenant and the appointment of another. The lords justices have usually been the lord primate, the lord chancellor, and the commander of the forces.

In England lords justices and regencies have been repeatedly appointed since the Revolution, on occasion of the king going abroad; and the appointment has usually, if not always, been made by royal letters patent under the great seal, in the same manner as the lord-lieutenants or lords justices of Ireland have always been appointed. In some cases, however, the aid of parliament has been called in for certain purposes. When King William went over to Ireland, in 1689, he of his own authority appointed the administration of the government to be in the hands of the queen during his absence out of the kingdom, not, however, we suppose, by letters patent, but merely by declaration at the council-table; and at the same time an act of parliament was passed, 1 & 2 Wm. and Mary, sess. 2, in the preamble of which that declaration of his majesty's pleasure was recited, and it was enacted, that whensoever and as often as his majesty should be absent out of this realm of England, it should and might be lawful for the queen to exercise and administer the regal power and government in the names of both their majesties, for such time only, during their joint lives, as his majesty should be absent. This act was considered to be necessary or expedient, in consequence of the peculiar circumstances in which the queen was placed by the Act of Settlement, which had declared that the entire, perfect, and full exercise of the regal power and government should be only in and executed by his majesty in the names of both their majesties during their joint lives. It was at the same time provided, "That as often as his majesty shall return into this kingdom of England, the sole administration of the regal power and government thereof, and all the dominions, territories, and plantations thereunto belonging or annexed, shall be in his majesty only, as if this act had never been made." After the queen's death lords justices were repeatedly appointed by King William, on occasion of his going abroad, under the great seal, namely, 5th May, 1695; May, 1696; 22nd April, 1697; 16th July, 1698; and 31st May, 1699.

One of the provisions of the statute of 12 & 13 Wm. III. (passed in 1700) for settling the succession in the House of Hanover, was, "That no person who shall hereafter come to the possession of this crown shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament." This clause, however, was repealed in 1716, by 1 Geo. I. stat. 2, c. 51. The repealing act was passed to gratify the king, whose "impatience to visit his German dominions," says Coxe in his 'Life of Walpole,' i. 77, "now became so great as totally to overcome every restraint of prudence and sug-

gestion of propriety, and imperiously to demand indulgence." "The ministry," continues the historian, "were considerably embarrassed on this occasion; and drew up a strong remonstrance, representing the inconvenience which would result from the projected journey. The remonstrance, however, not only failed of success, but so far exasperated the king, that he declared he would not endure a longer confinement in this kingdom." It was thought more respectful to his majesty to obtain a repeal of the restraining clause at once, than to ask parliament merely for the leave of absence; and the bill passed through all its stages in both Houses without a dissenting voice, the Tories being favourably disposed to the principle, and the Whigs averse or frightened to offend the king. His majesty, who was at variance with his eldest son, now interposed another difficulty, refusing to intrust the government during his absence to the prince, without joining other persons with him in the commission, and also limiting his authority by the most rigorous restrictions. Upon this point, however, he yielded at last to the representations of the ministers, who concluded a long exposition of reasons against his leaving the kingdom at all at that crisis by stating that, "upon a careful perusal of the precedents, finding no instance of persons being joined in commission with the Prince of Wales," in the appointment of a regency, "and few, if any, restrictions upon such commissions," they were of opinion that the constant tenor of ancient practice could not conveniently be receded from. (See the paper in Coxe, ii. 51-54.) Upon this the king submitted to give the prince the sole direction of affairs; "yet," says Coxe, quoting from the work called 'The Political State of Great Britain,' "he appointed him *Guardian of the Realm and Lieutenant*, an office unknown in England since it was enjoyed by Edward the Black Prince." In point of fact the title given to the prince in the original Latin commission was *Custos Regni nostri et locum tenens*, which were the same words that had been commonly used in all such commissions down to the reign of Henry VIII., with this difference only, that one of the two titles (more frequently *Custos regni*) was alone employed. The earliest use of the term *regent* appears to have been in the commission from Henry VIII. to Queen Katherine Parr, when he went over to Boulogne in 1544, in which she is stated *Rectrix et Gubernatrix regni nostri*. Queen Mary, the wife of William III., whose case is the next that occurs, seems, as already stated, to have had no commission; and, being queen regnant in her own right, she was not even popularly styled regent.

When George I. went abroad the next time, in May, 1719, he intrusted the government during his absence not to a regent, or any single person, but to thirteen lords justices, namely, the Archbishop of Canterbury and the principal officers of state. A translation of the commission issued on this occasion, or rather, of the warrant to the attorney-general to prepare the commission, has been printed in the report of a committee of the House of Commons which sat in December, 1788, and affords us probably the most complete information to be found, in a printed form, on the subject of the present article. The committee state that they had found no entry of any earlier commission, except of the one issued in 1695, and that that was nearly the same with this of 1719, which appears to have been also closely followed in others subsequently issued. The commission begins by reciting that his majesty had "determined, for divers weighty reasons, speedily to go in person beyond the seas." The persons commissioned are appointed to be "our guardians and justices (*Justiciarii* must be the Latin term) of our said kingdom of Great Britain, and our lieutenants in the same, during our absence out of our said kingdom, or till further signification of our pleasure;" and they are authorized, four being made a quorum, "to execute the office and place of guardians, &c., and to order, do, and perform all and every act and acts of government and administration of government, and all other matters and things whatsoever, which, by virtue or by reason of the aforesaid office or place, have been usual, or may be lawfully ordered, done, or performed." Power

is afterwards specially given to keep the king's peace, to cause the laws and customs of the kingdom to be specially observed by all, to punish criminals and offenders, to hold the parliament then existing, and to continue, prorogue, and dissolve it, and likewise to summon and hold another parliament and other parliaments, and the same to continue, prorogue, and dissolve; also to direct and grant authority to the lieutenant, or justices and general governors, of the kingdom of Ireland for the time being, to summon, hold, prorogue, and dissolve the parliament and parliaments in the said kingdom, and likewise to prepare and transmit the bills which may be proposed to be enacted in such parliaments, according to the laws and statutes of the kingdom of Ireland; to summon and hold the Privy Council, and to appoint committees of the same; with the advice of the Privy Council, to issue proclamations, "and to do and perform all other things which have been usually done, or may be done, by us, by or with the advice of the same;" to appoint and authorize persons to treat with the ambassadors, commissaries, and ministers of emperors, kings, princes, republics, or states, and to make and conclude treaties, conventions, and leagues thereupon; to confer, grant, and present to all benefices, dignities, and ecclesiastical promotions, where the presentation is in the crown; to issue commands, authorities, orders, and warrants, under the privy seal or otherwise, to the treasurer, or commissioners of the treasury, and other officers, for and concerning the collection, levying, application, payment, and disposal of the royal treasure and revenue; to command the army; to suppress invasions and insurrections; to execute and employ martial law in time of war, if that should happen; in like manner to command and employ the naval forces of the kingdom; to appoint to and discharge from all offices at the disposal of the crown; to grant pardons for high treason and all other crimes and offences; and, finally, to do all these things in Ireland as well as in Great Britain.

This enumeration is probably the most authentic compendium that has been published of the powers of government ordinarily exercised by the crown. It does not, however, profess to be an enumeration of all the powers resident in the crown; and it will be especially observed, that (besides, perhaps, some appertaining to the office of supreme head of the church) the power of creating peers and conferring honours is not made over to the lords justices. That is a power which, we believe, never has been delegated, or attempted to be delegated, if we except only the case of the patent granted by Charles I., in 1644, to Lord Herbert (better known as the Earl of Glamorgan), which, after the Restoration, he was compelled to resign by the interference of the House of Lords.

The Lords Justices are further required in the commission of 1719, in the execution of their powers, punctually to observe his majesty's will and pleasure, as it might be from time to time more clearly and distinctly expressed in instructions signed by the royal hand; and the commission was accompanied by a set of instructions, also printed in the Report of the Committee of 1788, and stated to be nearly the same that had been issued, as far as was known, on similar occasions before and since. The rules prescribed are twenty-one in number, the most important things directed in which are, that no livings or benefices in the gift of the crown which may become vacant shall be disposed of without his majesty's directions as to the persons, to be signified from beyond the seas under the sign manual; that no orders or directions concerning the disposition of money at the treasury shall be given before his majesty's pleasure shall have been signified thereupon; and that there must be no exercise of the power of dissolving the parliament, or calling a new one, without special signification of the royal pleasure. The same restriction is put upon the exercise of the power of pardoning, and some of the other powers. In case, however, they should hold it necessary or expedient for the public service, the Lords Justices are authorized to fill offices immediately, and also to reprieve criminals; and they are permitted to continue the existing parliament by short prorogations, until they should be otherwise di-

rected under the royal sign manual, and to summon the privy council to meet as often as they shall see occasion.

The government was in the same manner intrusted by George I. to Lords Justices when he again went abroad in 1720, 1723, 1725, and 1727. It is strange that the Report of 1788 should notice only the second of the several regencies of Queen Caroline, in the earlier portion of the reign of George II. Her majesty so long as she lived was always intrusted with the administration of the government when the king went abroad; which he did in 1729, in 1732, in 1735, and in 1736. An act, the 2 Geo. II. chap. 27, was passed in 1729, "To enable her majesty to be regent of this kingdom, during his majesty's absence, without taking the oaths;" on the 15th of May thereafter, according to Salmon's 'Chronological Historian,' a commission passed the great seal constituting her guardian and lieutenant of the kingdom during the king's absence; and the same authority states her to have been appointed guardian in 1732, and regent on the two other occasions. According to the Report of the committee of 1788, a patent, with the like powers as that issued to the Prince of Wales in 1716, passed in 1732, appointing Queen Caroline guardian and lieutenant of the kingdom in the king's absence. Most probably all the four appointments were made in the same manner and in the same terms. After the death of Queen Caroline, the government was always left during this reign in the hands of Lords Justices when the king went abroad; as he did in 1740, 1741, 1743, 1745, 1748, 1750, 1752, and 1755. On all these occasions the commissions and the accompanying instructions were nearly the same with those issued in 1719.

George III. during his long reign never left England. When George IV. went to Hanover in September, 1821, nineteen guardians and Lords Justices were appointed, the Duke of York being the first. In an important article which appeared in the 'Morning Chronicle' for August 11th, 1845, the writer, after stating that Lord Eldon considered it indispensably necessary that Lords Justices should be appointed on that occasion, adds:—"One good effect arose from their appointment, that the Lords Justices during his (the king's) absence signed an immense number of military commissions and other documents, which had been accumulating since his accession to the throne." This writer contends that "the royal authority of an English monarch cannot be personally exercised in a foreign country." "We take it," he adds, "to be quite clear, that a patent sealed with the great seal in a foreign country would be void. To guard against any such irregularity, the law requires that the patent shall state the place where it is signed and sealed as *apud Westmonasterium*."

Nevertheless, no provision such as had been customary on such occasions was made for the exercise of the royal authority, either when her present majesty made her short excursion to the French coast in 1843, or when she made her late more extended visit to Germany (in August and September, 1845). On the latter occasion the subject was brought forward in the House of Lords by Lord Campbell, who, on the 7th of August (two days before the prorogation of Parliament), after stating at some length the course which he maintained had been uniformly taken down to the year 1843, asked if it was the intention that Lords Justices should be now appointed? The lord chancellor, however, replied that the government had no such intention. "On the occasion of her majesty visiting the king of the French," his lordship is reported to have said, "the then law officers of the crown, the present lord chief baron and the late Sir William Follett, had been consulted. . . . And after mature deliberation, these learned persons gave it as their decided opinion that it was not at all necessary in point of law that such an appointment should take place. . . . In the present instance also, the law-officers of the crown had been consulted as to whether it was necessary in point of law for her majesty to appoint a regency during her absence, and their reply was, that it was in no degree necessary; an opinion in which he entirely concurred." Both the speech with which Lord Campbell prefaced his question, and the subsequent article in the 'Morn-

ing Chronicle,' well deserve to be consulted.

It ought to be mentioned that the seven persons appointed in 1705 by the 4 & 5 Ann. chap. 8, and again in 1707, by the 6 Ann. chap. 7, to administer the government along with other persons whom the new king or queen should have named, in case of his or her absence at the time from the kingdom, are styled Lords Justices in the act, although called regents by Burnet, and in the common accounts. These Lords Justices (twenty-six in all), who actually came into office on the death of Queen Anne, 1st August, 1714, and continued till the arrival of the king on the 18th of September, enjoyed more extensive powers than any others that have been appointed at least in modern times. They were authorized, in the name of the successor, and in his or her stead, to use, exercise, and execute all powers, authorities, matters, and acts of government, and administration of government, in as full and ample manner as such next successor could use or execute the same if she or he were present in person within this kingdom of Great Britain," until such successor should arrive, or otherwise determine their authority. The only restrictions laid upon them were, that they were not, without direction from the "queen or king," to dissolve the parliament; and that they would subject themselves to the pains of high treason if they gave the royal assent to any bill or bills for repealing or altering the Act of Uniformity, or the Act for the Establishment and Maintenance of the Presbyterian Church Government in Scotland.

We are not aware that these facts have ever before been put together. The most important of them have been derived from the Report of the Committee appointed by the House of Commons in 1788, "to examine and report precedents of such proceedings as may have been had in the case of the personal exercise of the royal authority being prevented or interrupted by infancy, sickness, infirmity, or otherwise," which is printed in the Journals of the House, vol. xliv. pp. 11–42. See also, besides the other sources that have been already referred to, an article "On the Regency Question," in the Edinburgh Review, No. xxxv. (for May, 1811), pp. 46–80. And some particulars may be gleaned from the accounts of the proceedings in the two Houses of Parliament on occasion of the King's illness in 1788, as reported in the 'Parliamentary History,' vol. xxvii. pp. 653–1297; and from the discussions on the Regency Bill from the beginning of November, 1810, to the middle of February, 1811, which nearly fill the 18th volume of the 'Parliamentary Debates.' One of the speeches which attracted most attention on the latter occasion for its argument and research was afterwards published in an authentic form; that delivered on the 31st of December, 1810, by John Leach, Esq. (afterwards Vice-Chancellor).

LORDS OF PARLIAMENT. [LORDS, HOUSE OF.]

LORDSHIP. [LEET.]

LOTTERIES have been encouraged by some states for the purpose of raising a revenue. The general plan has been for the government to sell a certain number of tickets or chances, and to distribute by lot a part of the money thus collected among a comparatively small number of the purchasers. Lotteries are games of chance, the aggregate number of players in which are sure to lose a part of their venture. During the period in which the English state lotteries were carried on by act of parliament, it was the plan to distribute in prizes of different magnitudes an amount equal to 10*l.* for each ticket or chance that was issued, and the profit to the state consisted of the sum beyond that rate which contractors were willing to give for the privilege of selling to the public the tickets or shares of tickets, which for that purpose they might divide into halves, quarters, eighths, and sixteenths of tickets. The price paid by the contractors for this privilege varied with circumstances, but was usually about six or seven pounds per ticket beyond the amount repaid in prizes, while the price charged by the contractors to the public was generally four or five pounds per ticket beyond that paid to the government: and more than this rate of advance was always required when the tickets were divided into shares, the smaller

shares being charged more in proportion than the larger.

The earliest English lottery of which there is any record was in 1569, when 40,000 chances were sold at ten shillings each: the prizes consisted of articles of plate, and the profit was employed for the repair of certain harbours. In the course of the following century the spirit of gambling appears to have materially increased in this direction, for *private* lotteries were, early in the reign of Queen Anne, suppressed "as public nuisances." In the early period of the history of the National Debt of England, it was usual to pay the prizes in the state lotteries in the form of terminable annuities. In 1694 a loan of a million was raised by the sale of lottery tickets at 10*l.* per ticket, the prizes in which were funded at the rate of 14 per cent. for sixteen years certain. In 1746 a loan of three millions was raised on 4 per cent. annuities, and a lottery of 50,000 tickets at 10*l.* each; and in the following year one million was raised by the sale of 100,000 tickets, the prizes in which were funded in perpetual annuities at the rate of 4 per cent. per annum. Probably the last occasion on which the taste for gambling was thus encouraged was in 1780, when every subscriber of 1000*l.* towards a loan of twelve millions at 4 per cent. received a bonus of four lottery tickets, the value of each of which was 10*l.*

In 1778 an act was passed obliging every person who kept a lottery-office to take out a yearly licence, and to pay 50*l.* for the same, a measure which reduced the number of lottery-offices from 400 to 51.

By limiting the subdivision of chances to the sixteenth of a ticket as the minimum, it was intended to prevent the labouring population from risking their earnings, but this limitation was extensively and easily evaded by means which aggravated the evil, the keepers of these illegal offices (commonly known as "little goes") and insurance offices requiring extra profits to cover the chances of detection and punishment. All the efforts of the police were ineffectual for the suppression of these illegal proceedings, and for many years a growing repugnance was in consequence manifested in parliament to this method of raising any part of the public revenue. At length, in 1823, the last act that was sanctioned by parliament for the sale of lottery tickets contained provisions for putting down all private lotteries, and for rendering illegal the sale, in this kingdom, of all tickets or shares of tickets in any foreign lottery, which latter provision is, to this day, extensively evaded.

The system of state lotteries was very long carried on by the French government, and was the cause of still greater demoralization than in England. State lotteries have been abolished in France.

The Hamburg lottery, which is still continued, is established upon a fairer principle than was adopted in France or England. The whole money for which the tickets are sold is distributed among the buyers, except a deduction of 10 per cent. which is made from the amount of the prizes at the time of their payment.

Lotteries have been very common in the United States, and have been sanctioned by the several states, not so much as a means of raising money for state purposes, as with the view of encouraging, as they supposed, many useful objects which could only be effected by raising at once a large sum of money, such as canals, the establishment of schools, and even the publication of a book. The numerous frauds practised in lottery schemes in the United States have perhaps done more to open the eyes of the people to the mischief resulting from them than any investigation into the true principles of lotteries. A distinguished American lawyer, who figured in the New York State Convention above thirty years ago, declared that though "he was no friend to lotteries, he could not admit they were *per se* criminal or immoral, when authorized by law. If they were nuisances, it was in the manner in which they were managed. In England, if not in France, there were lotteries annually instituted by government, and it was considered a fair way to reach the pockets of misers and persons disposed to dissipate their funds. The American Congress of 1776 instituted a national lottery, and perhaps no body of men ever surpassed them in intelligence and virtue." These remarks are merely quoted in order

to show what a man of high character in America for integrity and knowledge thought of lotteries. The opinions which he expressed were at that time shared by a great number, and lotteries are still common in the United States, as the advertisements in their papers show.

The lotteries called Art-Unions, which are common in Germany, were very prevalent in England in 1844. The Art-Union of London, which was established in 1837, received subscriptions to the amount of 484*l.*, but in 1844 the amount received was 14,848*l.* Each member subscribed 21*s.*, and the committee of management set apart a portion of the aggregate sum subscribed for the purpose of engraving some work of art, a copy of which was given to each subscriber; but by far the greater portion of the sum subscribed was appropriated to the purchase of pictures ranging in value from 10*l.* to 400*l.*, and on a certain day these pictures were distributed as prizes amongst the subscribers, by a process resembling the drawing of a lottery. As lotteries had been put down by act of parliament, these Art-Unions were in reality illegal, and in consequence of a notice issued by the government in April, 1844, their operations were suspended for some time, and a parliamentary committee was appointed to inquire if they could not be placed on a safe basis, and rendered subservient to the improvement of art. A short act was passed to indemnify the managers for the penalties which they might be considered to have incurred, and in 1845 another act was passed with a similar object; but the legislature has still left the matter unsettled.

LUNACY. Unsoundness of mind is perhaps the most accurate definition of the present legal meaning of lunacy. Formerly a legal distinction was made between lunatics and idiots: a lunatic was described as one who has had understanding, but from some cause has lost the use of his reason; and an idiot, as one who has had no understanding from his nativity. The distinction between these two classes of persons of unsound mind also produced some important differences in the management of their property which have now fallen into disuse. Strictly speaking, perhaps a lunatic is one who has lucid intervals, but this distinction may also at the present day be disregarded.

Persons of unsound mind may inherit or succeed to land or personal property either by representation, devise, or bequest, but they cannot be executors or administrators, or make a will, or bind themselves by contract. It is stated by Blackstone that the conveyances and purchases of persons of unsound mind are voidable, but not actually void; this however perhaps needs some qualification, for a bargain and sale, or surrender, &c., and also personal contracts made or entered into by such persons, are actually void as against their heirs or other representatives, though it is true a feoffment with livery of seisin was voidable only. A person of unsound mind, though he afterwards be restored to reason, is not permitted to allege his own insanity in order to make his own act void; for no man is allowed to plead his own disability (13 Vesey, 590), unless he has been imposed upon in consequence of his mental incapacity (2 Carr. & P. 178; 3 Carr. & P. 1, 30); and an action will lie against a lunatic upon his contract for necessaries suitable to his station. The reader is referred for information upon this subject to 1 Blackst. *Comm.*, 291; 1 Fonbl. *Eq.*, b. 1, c. 2; 2 Sugden, *Pow.*, 295-6; 5 Barn. & C. 170; Moody & M. 105. 6. Acts done during a lucid interval are valid, but the burthen of proving that at the time when the act was done the party was sane and conscious of his proceedings, lies upon the person asserting this fact. The marriage of a person of unsound mind, except it be solemnized during a lucid interval, is void.

The degree of responsibility under which persons of unsound mind are placed with respect to crimes committed by them, as well as the degree of unsoundness of mind which should be considered as depriving the party of that amount of self-control which constitutes him a responsible agent, are in a state of uncertainty. As a general rule it may however be laid down that where unsoundness of mind, of such a nature as to render the party incompetent to exercise any self-control, is established, criminal

punishment will not be inflicted; but that he will be kept in safe custody during the pleasure of the crown (39 & 40 Geo. III., c. 94, and 1 & 2 Vict., c. 14). On the subject of criminal responsibility, and what constitutes unsoundness of mind in a legal point of view, the reader is referred to the various treatises on medical jurisprudence, particularly to that by Dr. Ray, lately published at Boston in the United States: and also generally to Dr. Haslam's 'Observations on Madness and Melancholy,' 'Medical Jurisprudence as it relates to Insanity,' 'Illustrations of Madness,' and his other works. Dr. Forbes Winslow on 'The Plea of Insanity in Criminal Cases' is a valuable book.

In an inquisition of lunacy the question to be decided is not whether the individual be actually of sound mind, though a jury on an inquisition held under a commission of lunacy must express their opinion or finding in the form that the alleged lunatic is of "unsound mind" (*In re Holmes*, 1 Russell, 182); but though such must be the finding in order to make a man legally a lunatic, the real question is whether or not the departure from the state of sanity be of such a nature as to justify the confinement of the individual, and the imposition of restraint upon him as regards the disposal of his property. No general rule can be laid down by which to ensure a right decision: but in all such inquiries it should be kept in mind that insanity varies infinitely in its forms and degrees. Persons may be of weak mind, and eccentric, and even be the subjects of delusions on certain subjects, and yet both inoffensive and capable of managing pecuniary matters. The individual's natural character should be taken into consideration as accounting for eccentricities of manner and temper, and his education in estimating his ignorance and apparent want of intellect; and lastly, due allowance must be made for the irritation and excitement produced in a mind, perhaps naturally weak, by the inquiry itself, and the attempt to deprive him of his liberty and the management of his property.

Sometimes the madman conceals his disease, and with such remarkable cunning and dissimulation that the detection of it is very difficult: this is more particularly the case when the insanity consists in some hallucination; and here, unless the nature of the delusion be known, it will often be in vain to attempt to establish by questions any proof of unsoundness of mind. Those who are insane on particular subjects will reason correctly on ordinary and trivial points, provided they do not become associated with the prevailing notions which constitute their disease.

When insanity is urged as the ground of non-responsibility for a criminal act, it has been erroneously held that the main point to be ascertained is, whether the individual has or had "a sense of good and evil," "of right and wrong." But this, though the doctrine of the English law, is found incapable of practical application; and the records of trials of this kind show that the guide to the decision has generally been the proof, or absence of proof, that insanity of some kind existed at the time of the act, although before and after it the power of reasoning and the knowledge of right and wrong might be retained. Thus, on the trial of Hatfield for shooting at George III., Erskine argued that the existence of a delusion in the mind absolves from criminal responsibility, if it be shown that the delusion and criminal act were connected; and on this principle Hatfield was acquitted, but confined for life. Bellingham however, who shot Mr. Perceval under an equally powerful delusion, in consequence of the greater excitement in the public mind occasioned by the result of the insane act, was convicted and executed. In many instances homicide has been prompted, not by any insane hallucination or delusion, but by a morbid impulse to kill. Here there is generally evidence of the feelings and propensities of the individual having been previously disordered, and judgment in such cases is aided by the absence of motive to the act. Where the general conduct of the prisoner has been such as to indicate unsoundness of mind, even though considerable contrivance has accompanied the act, or where there is evidence of his having been the subject of an irresistible impulse

to kill, it is becoming now the practice to find a verdict of acquittal, in opposition to the older authorities, who confined the exemption from responsibility on the ground of insanity within very narrow limits.

A perfect consciousness of right and wrong may exist, but the insane person may want that power of self-control which would secure his doing the right and avoiding the wrong. This was the line of defence adopted in the case of M'Naughten for shooting Mr. Drummond.

A lunatic is, according to law, responsible for acts committed during "lucid intervals," a term by which is understood however, not mere remissions of the violence of the disease, but periods during which the mind resumes its perfectly sane condition. In forming an opinion concerning such lucid intervals, the absence of the signs of insanity must have considerable duration before it can be concluded that the mind is perfectly sane; for lunatics, when apparently convalescent, are subject to sudden and violent paroxysms.

One of the most difficult points to be determined is with regard to the mental capacity of old persons, in whom the mind is impaired. The decay of intellect in old age is first manifested in the loss of memory of persons, things, and dates, and particularly with respect to recent impressions. But it is not the mere liability to forget names, and such matters which will render the will of an old person invalid; it should be shown that in conversation about his affairs, and his friends and relations, he did not evince sufficient knowledge to dispose of his property with sound judgment. Many old men appear stupid and forgetful, but when their attention is fairly fixed on their property, business, and family affairs, they understand them perfectly, and display sagacity in their remarks.

The care and custody of idiots and lunatics form a branch of the royal prerogative, and were formerly administered by the king himself. Since the dissolution of the Court of Wards, the lord chancellor has been specially appointed to exercise this power. [CHANCELLOR.] The method of proving a person to be of unsound mind, for the purpose of depriving him of the control of his property, and, where the circumstances require it, providing for the safe custody of his person, is as follows:—The lord chancellor upon petition supported by affidavits, and in some cases upon a personal interview also with the alleged lunatic, when such a course seems necessary, grants a commission to inquire into the state of mind of the party by a jury, and if the jury should find him to be *lunatic* or of *unsound mind* (one of which modes of finding is absolutely necessary in order to establish the legal fact of lunacy), the care of his person is committed to some relation or other fit person with a suitable allowance for maintenance, who is called the committee of the person; and the care of the estate is committed either to the same or some other person, who is called the committee of the estate. The acts of the lunatic with respect to the disposition of his property, which he has done after the time at which the verdict finds that he was of unsound mind, are void. The commission is a proceeding issuing from the common-law side of the Court of Chancery; but after the appointment of the committee, the chancellor acts by virtue of his general authority, and his orders are enforced by the general process of the court. The committee of the estate is considered as a mere bailiff appointed by the crown for the sole interest of the owner, and without any regard to his successors; but the court will order allowances to be made to near relations of the party who is of unsound mind, and even to his natural child, where the circumstances of the several parties justify and require it, and will direct proper acts to be done for the management of the lunatic's estate and property. Unless a person is declared of unsound mind in due legal form, no person can meddle with the management of his property, even if the person is incompetent to manage it himself. Cases occur in which the expense of a commission of lunacy is a great difficulty, when the property is small; and it is therefore desirable to diminish the expenses of such commissions, and to facilitate the proceedings, so far as is

consistent with proper inquiry, and the prevention of fraudulent attempts to deprive persons of the management of their property and of their liberty.

Some recent acts have made alterations in the proceedings under commissions of lunacy.

An act of the 3 & 4 Wm. IV. c. 36, is entitled 'An Act to diminish the Inconveniences and Expenses of Commissions in the Nature of Writs De Lunatico Inquirendo; and to provide for the better Care and Treatment of Idiots, Lunatics, and Persons of Unsound Mind, found such by Inquisition.'

An act of the 5 & 6 Vict. c. 84, is entitled 'An Act to alter and amend the Practice and Course of Proceeding under Commissions in the Nature of Writs De Lunatico Inquirendo.' The first section empowers the Lord Chancellor to appoint two serjeants or barristers at law, to be called 'The Commissioners in Lunacy;' and enacts that in future all Commissions in the nature of Writs De lunatico inquirendo shall be directed to such commissioners, and that such Commissioners shall jointly and severally have and execute all the powers, duties, and authorities now had and executed by commissioners named in commissions in the nature of Writs De lunatico inquirendo. The commissioners (§ 2) are to conduct all inquiries with respect to Lunatics and their estates in such manner as the Lord Chancellor shall from time to time direct; and it is provided that nothing in this act shall prevent the Chancellor from issuing any commission in the nature of a writ De lunatico inquirendo, addressed to any fit or proper person or persons, in addition to the Commissioners in Lunacy.

§ 3 empowers the Chancellor to refer to the Commissioners in Lunacy, or either of them, any of the inquiries and matters connected with the persons and estates of Lunatics which are usually referred to the Masters in Ordinary in Chancery; and § 4 makes the Commissioners in Lunacy visitors, under the direction of the Chancellor, of all persons found idiot, lunatic, or of unsound mind, by inquisition, jointly with the three visitors appointed by the 3 & 4 Wm. IV. c. 36.

§ 7 empowers the Chancellor from time to time to regulate the form and mode of proceeding before and by the said commissioners, and the practice in matters in Lunacy; and to regulate the number of jurymen to be sworn to try inquests on Commissions in the nature of Writs De lunatico inquirendo; but it is provided that every inquisition on such commission shall be found by the oaths of twelve men.

By the 8 & 9 Vict. c. 100, § 2, the two commissioners of lunacy are henceforth to be called Masters in Lunacy, and take the same rank and precedence as the masters in ordinary of the High Court of Chancery. Some other regulations as to the duties of the masters in lunacy are contained in 8 & 9 Vict. c. 100, § 95-98.

The other sections of the act 5 & 6 Vict. c. 84, make regulations as to fees and other matters, for which the act must be consulted. The salary of the commissioners is 2000*l.* a-year, free from all taxes or abatement.

The term Lunatic is only properly applied to a person who is found to be a lunatic by the verdict of a jury under an inquisition, as already explained. But the term lunatic is also applied to those who, being considered lunatics, are confined in lunatic asylums or hospitals, under such regulations as the 8 & 9 Vict. c. 100, § 44-49 prescribe, without having been found lunatics under an inquisition; and also to any single patient who is boarded or lodged for pay as a lunatic in a house not licensed under the act, § 90; and also to any person who is under the care of any person who receives or takes the charge of such one lunatic only, and derives no profit from the charge (§ 112). As to the persons and property of such so-called lunatics, who have not been found lunatic by a jury, the 8 & 9 Vict. c. 100, § 94, enacts, That whenever the commissioners in lunacy shall have reason to suppose that the property of any person detained or taken charge of as a lunatic is not duly protected, or that the income thereof is not duly applied for his maintenance, such commissioners shall make such inquiries relative thereto as they shall think proper, and report them to the lord chancellor. § 98 enacts, That when any person shall have been received or

taken charge of as a lunatic upon an order and certificate, or an order and certificate under the provisions of that act, and shall either have been detained as a lunatic for the twelve months then last past, or shall have been the subject of a report by the commissioners in lunacy in pursuance of § 94, the lord chancellor shall direct one of the masters in lunacy to inquire and report to him as to the lunacy of such person so confined, and the chancellor is authorised to make orders for the appointment of a guardian or otherwise for the protection, care, and management of such lunatic, and such guardian is to share the same powers and authorities as a committee of the person of a lunatic found such by inquisition now has, and to appoint a receiver or otherwise for the care and management of the estate of such lunatic, and such receiver is to have the same powers as a receiver of the estate of a lunatic found such by inquisition now has; and the chancellor is also empowered to make orders for the application of the income of the lunatic towards his maintenance, and the cost of the care and management of his person and estate, and also as to the investment or other application for the purpose of accumulation of the overplus; but such protection, care, and management are only to continue so long as such lunatic shall continue to be detained as a lunatic upon such order or certificate as aforesaid, and such further time, not exceeding six months, as the chancellor may fix; but the chancellor may in any such case, either before or after directing such inquiry, and whether the master shall have made such inquiry or not, direct a commission in the nature of a Writ De lunatico inquirendo to issue, to inquire of the lunacy of such person.

In the Roman system, persons of unsound mind (furiosi) might be deprived of the management of their property on application to the praetor by his next of kin. This legislation was either introduced or established by the Twelve Tables. The person who had the care of the lunatic and of his property was called a curator [CURATOR]. The Twelve Tables gave the care of the lunatic to his agnati. In those cases where the law had not provided for the appointment of a curator, the praetor named one. (*Dig.* 27, tit. 10; *Instit.* 1, tit. 23.)

On the general subject see Stock *On the Law of Non Compotes Mentis;* and Collinson *On Lunacy.*

LUNATIC ASYLUMS. COMMISSIONERS IN LUNACY. STATISTICS, CONSTRUCTION, and MANAGEMENT OF ASYLUMS. The subject of insanity and asylums for the insane has of late years occupied a very large share of public attention; particularly as an opinion has prevailed that insanity is on the increase in this kingdom beyond the ratio of population. The want of accurate information renders this point doubtful; but it is certain that more than 20,000 insane persons are in confinement in the public asylums and licensed houses in England and Wales, of whom 16,000 are paupers. But as a great number of patients are confined separately, or in the care of their relatives, of whom no public returns are made, this number is probably much underrated.

Two acts passed in 1845 (8 & 9 Vict. caps. 100 and 126) have placed the powers vested in the Commissioners in Lunacy on an entirely new footing, and have in many respects modified the constitution of asylums. The first act repeals 2 & 3 W. IV. c. 107; 3 & 4 W. IV. c. 64; 5 & 6 W. IV. c. 22; 1 & 2 Vict. c. 73; 5 Vict. c. 4; & 5 & 6 Vict. c. 87. This first act appoints six commissioners, three of whom are physicians, and three barristers, with salaries; and five other commissioners who act gratuitously. The rule that none of these shall be connected with any asylum is continued. No person can act as a commissioner who within two years has been directly or indirectly connected with any asylum. Licences are granted by these commissioners at each of their quarterly meetings. Any person who wishes to open a house for the reception of patients is required to send a plan upon a scale of one-eighth of an inch to a foot of every part of the premises at least fourteen days previously to his application. No additions to or alterations in a licensed house can be made without the consent of the commissioners. No licence is to remain in force more than thirteen months, and

the notice of a wish to renew must give the number of patients then confined. The jurisdiction of the commissioners extends to the whole of London and Middlesex, and Southwark: and to all places within seven miles of London, Westminster, and Southwark: in the country the licences are to be granted by the justices of the peace in quarter-session, who are bound to appoint three of their number, together with one physician, surgeon, or apothecary, as visitors of the asylums licensed by them. Strict regulations are enforced for the reception of patients; it is required that every person not being a pauper, received as insane, shall be certified to be so by two physicians or surgeons, who shall visit such patient separately, and shall have no interest in the asylum in which such patient is to be confined; and certain entries of these particulars are to be kept at each asylum. For a pauper, the certificate of one medical man and the order of two justices is required.

Penalties are fixed for neglecting these rules, or those which direct notice to be given of every admission, death, discharge, or escape. Houses having 100 or more patients are to have a resident medical attendant, and those of smaller size are to be visited by a medical attendant at defined periods, according to their size. Every house within the immediate jurisdiction of the commissioners shall be visited by them at least four times in the year, and every other house at least twice in every year; these visits may be made at any hour, even by night, and it is penal to conceal any part of a house from them. Similar powers are given to the visitors in the country.

The commissioners are to present an annual report to the lord chancellor of the state of the different asylums visited by them, which Report shall be laid before parliament.

An important alteration is made in the law concerning the care of single patients. Orders and medical certificates must in future be procured for the care of one patient similar to those used for the admission of patients into licensed houses; and copies of these documents are to be privately sent to and registered by the secretary to the commissioners. This act only extends to England and Wales, and it does not affect Bethlem Hospital, London. The persons appointed to hold commissions "De lunatico inquirendo," heretofore styled commissioners, are in future to be termed "Masters in Lunacy."

The second act, which repeals 9 Geo. IV., c. 40, relates to the regulation of lunatic asylums for counties and boroughs, and the maintenance and care of pauper lunatics; and gives to the commissioners a greater power over these institutions, which had previously been entirely under the control of justices of the peace. The justices of every county and borough are now to be compelled to erect or to join in the erection of an asylum when none such already exists; and all proposals, agreements, and plans, and the rules and regulations of each asylum, are to be submitted to the commissioners, and all contracts and estimates approved by the secretary of state. Contracts for the care of insane persons in licensed houses do not exempt any county or borough from the obligation of providing an asylum. Power is given to committees to grant retiring allowances to the officers of asylums; and a medical officer must be resident in every asylum which contains more than 100 patients. Lists of all the patients are to be sent twice in every year to the commissioners by the medical officer. This act extends only to England and Wales, and does not apply to Bethlem Hospital.

Great advantages may fairly be anticipated from the restrictions imposed by these acts; and they may probably only be considered as steps towards the highly desirable result of making all insane persons immediately the care of the State. The duties of the commissioners have, until the last few years, been very imperfectly performed, and the utmost secrecy as to their names and movements was preserved. The management of private asylums must vary considerably, as such houses are rarely built for the purpose, and are frequently under the direction of persons unfitted by their want of education for such an important charge; but these circumstances can by no means be admitted as excuses for the scandalous in-

stances of cruelty and mismanagement which have gone on under the eyes of the commissioners, and in houses which have received their praise; especially in those large private asylums, where an immense number of paupers are taken at low rates; the temptation held out in such cases to economy at the expense of the care and comfort of the patients ought to call forth an especial watchfulness on the part of the commissioners.

The patients who are confined in prisons, hospitals, workhouses, or in the houses of their relatives, are exposed perhaps more than any others to great neglect and mismanagement; and not unfrequently are treated with great cruelty, even when the intentions of the parties who have charge of them are good, through their entire ignorance of the nature and proper treatment of the disorder.

Management of Public Asylums.—There is considerable diversity in the internal regulations of different public asylums as to the power and position of the medical and non-medical officers. In some there is a resident physician who holds the supreme authority, and is also steward and general manager; in others the physician only presides in his own department; and in others the chief officer is not medical, and the physician is non-resident. The Norfolk asylum is the only large one in England without a resident medical officer; and this fact is severely commented on by the commissioners in their report. Under the new act a resident medical officer must be appointed; but we understand that the chief authority will still remain with the non-medical superintendent. In the 70th Report of the visiting justices of Hanwell (April, 1844), it is stated that they have appointed an officer in the army to superintend the institution, with a view to the preservation of greater order and discipline than had been maintained under medical rule; in the 72nd Report (October, 1844) the resignation of the governor is mentioned, and we cannot learn from the reports that any steps have been taken to appoint a successor, nor whether the advantages derived from his appointment equalled the expectation of the justices.

In all asylums the position of the matron is one which requires to be settled in some uniform manner; owing to the matron having been in many cases the wife of the superintendent, an undue importance has been given to her position; the appointment of the female attendants, and even the classification of the female patients, has sometimes been left in her hands. When we consider that the matron cannot possibly have had a medical education, and that in very few cases those who hold the situation possess any previous knowledge of insanity, or are even persons of good general information, it is manifestly improper to allow her too high an authority. In the French asylums, and we believe also in some of those in the United States, there is no matron: a few of the most experienced female attendants act as heads of departments, and receive the orders of the medical officers; and this arrangement, which is found to work exceedingly well at the Salpêtrière, where there are 1500 female patients, seems on the whole to be the best. The effect of placing the matron in a higher position is almost certainly to bring about interference on her part with the duties of the medical officers, which cannot fail to be injurious to the welfare of the patients. At Hanwell the salary of the matron is higher than that of the resident medical officers, or than that of any officer excepting the physician.

In the appointment of a chaplain, steward, secretary, accountant, and any other officers, the most important point is to confine their duties within certain proper limits, and to prevent their interference with the patients without the concurrence of the medical officers.

If the government should at any time take the entire supervision of asylums for the insane into its own hands, we trust that the mode of proceeding will be to appoint to each asylum one resident medical officer, who shall be responsible for the entire conduct of the asylum; and to whom, therefore, the power of appointing and dismissing all the subordinate officers shall be given. Uniformity of system, the want of which has been a great evil in many asylums, would thus be secured; and the careful selection of a competent

principal officer responsible for every instance of negligence or cruelty in the asylum under his care, could not fail to improve the general management of these institutions. At Glasgow the whole authority has for some years been in the hands of the resident physician, with the most satisfactory results; and an approximation is made to this plan in the Irish district asylums, where the non-resident physician is the principal officer.

By the acts lately passed, the power which the justices who had the control of different asylums possessed of passing rules at any meeting which entirely changed the system of management, or of summarily dismissing any officer, is done away with. The caprices of the governors of some asylums have changed their entire constitution in a few years.

A great improvement has been made of late years in the class of persons appointed as attendants, or, according to the old phraseology, *keepers*. That all such persons should possess benevolence and intelligence is essential to the effective working of a humane and enlightened system; and they should be liberally paid. The proportion of attendants to patients in the different English public asylums varies from one to ten, to one to twenty; the former does not seem too much, and is far less than that in all well-managed private asylums. No ward, however small, should have less than two attendants, in order that it should never be left; this is enforced by the rules of several asylums. A large number of attendants renders a vigilant superintendence by night practicable, which is no less important than by day, although it is entirely omitted in some institutions.

Every part of the treatment of the insane has of late years been much modified by the introduction of a much milder mode of management. The total abolition of personal coercion, known as *the non-restraint system*, was first introduced at the Lincoln asylum in 1837, and its complete success there led to its adoption at Hanwell in 1839, and shortly afterwards at Northampton, Gloucester, Lancaster, Stafford, and Glasgow. This system has since been adopted at Haslar Hospital, and also at Armagh, Londonderry, and Maryborough; and very little restraint is used at the other Irish district asylums. The asylums which do not agree to the disuse of restraint as a principle, have effected it in practice, with very few exceptions; thus the reports of Nottingham, Dorset, Montrose, Edinburgh, and Dumfries speak of the advantages of restraint, although the writers abstain from availing themselves of it; while on the contrary the authorities of Bethlem, St. Luke's, Kent, Oxford, and the Retreat at York, profess the non-restraint system, although they do not entirely practise it.

It would far exceed the limits of this article to point out the progress of this system, and the circumstances which rendered it desirable; from the year 1792, when Pinel struck off the chains of the patients at the Bicêtre, a gradual improvement has been going on in the treatment of these, the most unfortunate of human beings; but the declaration that mechanical restraints were "never necessary, never justifiable, and always injurious," made by Mr. Hill of Lincoln, has caused this march of improvement to proceed much more rapidly. The reports of the asylums in which the new system has been introduced, especially those of Hanwell, give all particulars as to the mode of management substituted for coercion.

However much opinions may differ as to the advantages of the abolition of restraint in those asylums which have not yet tried the experiment, we have before us the facts that many thousand patients have been treated entirely without it; that in no asylum where the new system has been introduced has it been found necessary to abandon it; that the reports of all these asylums state their general condition to be improved; that the cures have not decreased; and, which we consider of equal importance, that the comfort of the incurables is much increased: and we may therefore be justified in considering that within a few years the instruments of restraint now remaining in use will disappear like those much more severe ones which preceded them.

Whilst many excellent asylums exist for the rich, and the law is providing an

increase of accommodation for the poor, benevolent individuals are making efforts to secure the benefits of proper treatment for the middle classes. It is proposed to build an asylum in the neighbourhood of London for 300 patients, at a cost of 30,000*l.*, which sum is to be raised by donations and subscriptions. When once established, it will be self-supporting, and it is expected that payments of from 1*l.* to 1*l.* 10*s.* per week for each patient will cover all the expenses. No existing asylum offers to persons able only to pay such a sum the comforts to which their position in society has accustomed them.

Construction.—The site and construction of an asylum for the insane are matters of great importance. A healthy and cheerful situation should be the first consideration in an institution intended for the cure of diseased minds. In this respect some existing asylums are very well placed; Hanwell, Lincoln, and Surrey may be instanced. Others have been originally on the outskirts of towns, and have been surrounded and built in by the increase of building. The commissioners mention several so placed in proper terms of censure.

It seems now generally admitted that the building ought not to be larger than to accommodate 300 or 400 patients. As to plan, no two of the existing asylums are alike, and the most recently erected are by no means the best. In the Surrey asylum a complete copy has been made of the worst and newest part of Hanwell, in which the bed-rooms face one another, and the galleries are lighted from the top, which renders proper ventilation impossible. To make wide galleries with rooms only on one side, would certainly increase the cost of the building; but by introducing a bow or expansion into each gallery, the necessity for a day-room will be done away with. An open fire should be in each of these expansions; it will be a great source of comfort to the patients, and an improvement in the ventilation as well as the general appearance of the gallery; and, with a light wire guard, is perfectly safe. This plan is to be adopted in the Derby asylum now building; and as a ward must occasionally be left with one attendant, there is an advantage in bringing the whole of it within sight from a central position. No ward should contain more than thirty patients; and of these from twenty to twenty-five ought to have single rooms. It is matter of regret to find that dormitories are approved by the commissioners, and supported by the officers of some asylums; they certainly lessen the cost of building, but the quiet and comfort of the institution must be much diminished. Their ventilation is also very difficult: single rooms may be warmed with a hot-water pipe passing along the floor (not over-head), and opening the window will be a sure means of making a complete change in the air; but in dormitories it will be difficult to preserve freshness of air with warmth, more especially as the great argument in favour of them is their economy, and an economy partly made by allowing to each patient a smaller number of cubic feet than would be given in a single room. For the sick, the violent, the dirty, and the noisy, single rooms are obviously necessary; and it will, we believe, generally be found that the remaining patients, those whose tranquillity and usefulness entitle them to indulgences, will consider a single room, which they can call their own, one of the greatest that can be given them.

An asylum containing 400 patients may probably be built in a straight line, which is desirable, without the necessity of carrying it higher than the first floor. The chapel and chief officers' rooms, and the rooms used for the work or amusement of the patients, should form the centre; behind which the kitchen may be conveniently placed, with the laundry on the side next the wards of the women, and the workshops on that of the men. In the wards branching off from the centre, those patients who are quiet and convalescent and the sick should be placed, and the most refractory at the extreme ends of the building, to prevent them from disturbing the others. Six classes of patients may usually be found, for each of which some modification of management will be required:—

1. Tranquil: convalescent and melancholic.

2. Moderately tranqui-
3. Refractory.
4. Sick and infirm.
5. Idiots and other dirty patients.
6. Epileptics of the better class. These are frequently in the intervals of their fits the most intelligent of the patients, but during the fits they require great attention.

All the sick, idiots, and epileptics should be on the ground-floor, which will be easily arranged, as the tranquil and moderately tranquil, who form the great bulk of the patients, may occupy the upper floor.

To describe the numerous minute particulars to be attended to in constructing and furnishing an asylum is unnecessary here; the great rule should be, that every possible amount of safety should be combined with every possible amount of cheerfulness. There should be the strength of a prison without its gloomy character. No part of the building, within or without, should be neglected; and scarcely a day passes without improvements being made in one asylum or other—improvements that are worthy of adoption in any to be hereafter built.

An abundant supply of warm and cold water should be secured; or in some cases it will be found that the cost of supplying this necessary article will neutralize the advantages of an otherwise favourable site.

Baths, water-closets, a store-room, and rooms for washing, are essential in every ward. Warm baths are considered by many authorities to be valuable remedial agents, as well as advantageous to the general bodily health.

The Commissioners have expressed an opinion that incurable paupers may be accommodated in asylums apart from the curable at a much less expense, and an arrangement for a separate provision for incurables is required by the new act (s. 27*); but they cannot be aware that while the incurables comprise all the most tranquil and intelligent of the patients, whose society is of great value to the curables, they also comprehend patients who display every different form of insanity, and require every variety of treatment. It is certainly much to be wished that provision could be immediately made for all insane paupers; but we cannot consider that the removal of all hope from a large number of them, by immuring them in an "asylum for incurables," would be the best mode of attaining this object.

The following is a statement of the cost of building and furnishing twenty-two asylums, including that of the land, which in some cases amounts to a large sum. The mean cost for each patient accommodated is 154*l.* 2*s.* 3*d.*, which is probably more than will be found necessary in most future asylums. The expense of maintaining patients varies from seven to fourteen shillings per week; this must of course depend in some degree upon the prices of provisions in different parts of the kingdom, and be modified by cheap and dear seasons.

* § 27. 'And be it enacted, That in the erecting and providing of every asylum hereafter to be erected or provided for the reception of pauper lunatics, and also in enlarging the same or any asylum already erected, regard shall be had to the number of lunatics to be provided for therein who shall be or be deemed curable or dangerous; and in order to prevent such lunatics being excluded from admission into such asylum by reason of the admission or accumulation therein of chronic or incurable lunatics, some separate or additional building shall be provided for chronic or incurable lunatics whenever, by reason of the increase in numbers of lunatics, the asylum shall be insufficient for the accommodation of all lunatics entitled to be received therein; and in order to secure the immediate admission into every such asylum of all lunatics deemed curable or dangerous, a sufficient number of such chronic or incurable lunatics shall, from time to time, be transferred from such asylum to such separate or additional building to be provided as aforesaid.'

Name of Asylum.	No. of Patients.	Cost.			Cost per Patient.			Land.		
		£.	s.	d.				A.	R.	P.
Bedford . .	180	20,500	0	0	113	17	9	9	0	0
Cheshire . .	152	28,000	0	0	184	4	2	10	3	0
Cornwall . .	172	18,780	0	0	109	3	8	presented		
Dorsetshire . .	113	14,717	0	0	130	4	9	8	3	0
Gloucester . .	274	51,360	0	0	187	8	11	15	0	0
Kent . . .	300	64,056	0	0	213	10	5	37	0	0
Lancaster . .	655	100,695	16	9	153	14	8	15	0	0
Leicester . .	152	27,630	13	3	181	15	6	8	1	0
Middlesex . .	1,000	202,000	0	0	202	0	0	77	0	0
Norfolk . .	220	50,000	0	0	227	5	5	4	2	0
Nottingham . .	200	36,800	0	0	184	0	0	8	0	0
Suffolk . .	228	32,000	0	0	140	7	0	30	2	0
Surrey . .	403	85,366	19	1	211	16	7	97	0	0
Yorkshire, W. Riding	420	46,846	0	0	111	10	7	40	0	0
Glasgow . .	350	46,000	0	0	131	8	6	68	0	0
								not included in cost		
Armagh . .	134	20,970	4	5	156	9	10	8	0	23
Carlow . .	180	22,577	16	4	125	8	8	15	0	39
Clonmel . .	120	16,677	19	3	138	19	7	11	1	14
Connaught . .	316	27,130	4	6	85	17	1	22	2	28
Londonderry .	212	26,282	8	3	123	19	3	12	5	2
Maryborough .	170	24,442	19	0	143	15	7	22	2	17
Waterford . .	127	16,964	12	1	133	11	7	14	2	12

Statistics.—There are in England and Wales 12 county asylums, 5 county and subscription, 11 partly subscription and partly charitable, 1 military, 1 naval, and 142 licensed houses; 14 of which last receive paupers. The hospital of Bethlem, which is exempt from the rules that affect other asylums, is to be added to this number.

Scotland has eight public asylums; in all of which, we believe, private patients as well as paupers are received; and some are assisted by charitable endowments.

Ireland has twelve public asylums; ten of these are district asylums for the poor; Cork is locally governed, and Swift's Hospital is founded by charter.

Several new asylums are in progress both in England and Ireland.

With a view to present in a few plain statistical tables the results of treatment in each of the existing public asylums, the writer of this article sent blank forms to each superintendent in the kingdom; in almost every case they have been filled up and returned, and their contents are embodied in the following tables. When information could not be obtained in this manner or from reports, the statistical tables published by the Commissioners in lunacy have been resorted to; but these only extend to the end of the year 1843, and required much correction, as they are not upon one uniform plan. We may instance the tables furnished by Bethlem and St. Luke's as omitting many of the particulars desired by the Commissioners. In several asylums no average number of patients is given, and the percentages of deaths and cures are calculated upon other numbers; in other asylums which have been opened many years the early records are so incomplete as to be useless. In several asylums, even in some recently opened, the published returns do not contain any distinction of the sexes.

The first table shows the whole number of patients admitted into the 49 public asylums of the United Kingdom to the latest date to which we can obtain information; being 38,498 males, 38,207 females, and 8,394 of whom the sex is

specified. Thus the admissions of s exceed those of females by 291, or e proportion of 1 to ·9924; a scarcely eciable difference. Of the whole ber of insane persons in England and es on the 1st January 1844, according to the report of the Commissioners, 9862 were males, and 11,031 females; thus the females exceed the males in the proportion of 1 to ·894. The greater mortality among men is the cause of this apparent discrepancy.

Table I.

Name of Asylum.	Date of Opening.	Date of Return.	Admissions.		
			Male.	Female.	Total.
ENGLAND.					
ord . . .	Aug. 1812	31 Dec. 1843	577	524	1,101
lem* . .	1547	„ 1844	2,658	3,643	6,301
tol, St. Peter's Hos-tal† . . .	1696	„ „	265	316	581
ham (Military) .	10 May 1819	„ 1843	586	22	608
hire . . .	20 Aug. 1829	„ „	511	386	897
wall . . .	Oct. 1820	„ „	429	329	758
setshire . .	1 Aug. 1832	„ 1844	202	253	455
ter, St. Thomas's ospital . .	1 July 1801	„ 1843	644	737	1,381
cester . .	21 July 1823	„ 1844	895	804	1,699
ar (Naval) . .	15 Aug. 1818	„ „	807	..	807
t . . .	1 Jan. 1833	„ „	439	325	764
caster . .	28 July 1816	24 June 1845	2,384	1,912	4,296
ester . .	10 May 1837	31 Dec. 1844	284	291	575
oln . . .	25 Mar. 1820	„ „	577	494	1,071
rpool . .	1792	„ „	2,418	1,456	3,874
dlesex . .	16 May 1831	30 Sept. „	1,431	1,370	2,801
folk . . .	May 1814	31 Dec. „	716	794	1,510
thampton . .	1 Aug. 1838	„ 1843	309	311	620
wich, Bethel Hos-tal‡ . . .	1713	„ 1844	96	105	201
tingham . .	12 Feb. 1812	30 June 1845	1,045	808	1,853
ord§ . . .	July 1826	31 Dec. 1844	..	..	493
Luke's . .	30 July 1751	„ „	7,130	10,410	17,540
ford§ . . .	1 Oct. 1818	25 Dec. „	..	..	3,073
olk . . .	1 Jan. 1829	29 Aug. 1845	627	620	1,247
ey . . .	14 June 1841	27 Aug. „	370	343	713
k§ . . .	Nov. 1777	1 June „	..	..	4,032
Friends' Retreat	June 1796	24 „ „	336	379	715
kshire, W. Riding	23 Nov. 1818	31 Dec. 1843	1,682	1,657	3,339
WALES.					
ibroke . .	1824	„ „	16	14	30
SCOTLAND.					
rdeen . .	1 Jan. 1821	1 May 1845	538	614	1,152
nfries (Crichton) .	1 June 1839	11 Nov. 1844	176	122	298
idee . . .	1 April 1820	16 June 1845	586	505	1,091
nburgh‖ . .	..	31 Dec. 1844	83	79	162
in . . .	9 April 1835	„ 1843	49	24	73

* Only for 24 years. † Only for 16 years. ‡ Only for 6 years.
§ Sexes not distinguished. ‖ Only for 1 year.

Name of Asylum.	Date of Opening	Date of Return.	Admissions.		
			Male.	Female.	Total.
Glasgow . . .	12 Dec. 1814	31 Dec. 1843	1,754	1,421	3,175
Montrose* . .	May 1782	" "	..	..	796
Perth . . .	1 June 1827	1 June 1845	307	270	577
IRELAND.					
Armagh . . .	14 July 1825	31 Mar. 1845	800	609	1,409
Belfast . . .	June 1829	" "	817	776	1,593
Carlow . . .	7 May 1832	31 Dec. 1844	302	307	609
Clonmel . . .	1 Jan. 1835	31 Mar. 1845	256	223	479
Connaught . .	16 Nov. 1833	" "	691	472	1,163
Cork . . .	1 Mar. 1826	31 Dec. 1844	1,739	1,749	3,489
Dublin (Richmond) .	Dec. 1830	31 Mar. 1845	763	626	1,389
" (Swift's Hospital)† . . .	..	31 Dec. 1844	104	67	171
Limerick . . .	31 Jan. 1827	28 Aug. 1845	906	840	1,746
Londonderry . .	June 1829	31 Dec. 1843	676	638	1,314
Maryborough . .	14 May 1833	31 Mar. 1845	296	301	597
Waterford . .	9 July 1835	31 Dec. 1844	221	261	482

* Sexes not distinguished. † Only for 6 years.

The following table (II.) shows the result in the same asylums as to cures and deaths during the same period. This comparative table is recommended by the commissioners, in addition to the tables showing the per-centage of cures and deaths on the average number.

The cures are taken as 1.

The term "Removed" includes all discharged improved or uncured, or escaped.

This table likewise shows the number remaining in the different public asylums at the latest dates to which we have been able to make up the returns, and which appears to be 5143 males, 5052 females, and 236 of whom the sex is not specified.

Table II.

Name of Asylum.	Discharged Cured.		Removed.		Died.		Remain.		Deaths, Cures being 1.	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
ENGLAND.										
Bedford . . .	217	165	170	185	115	110	75	64	·529	·666
Bethlem	1052	1761	1022	1301	220	205	189	197	·209	·116
Bristol	117	133	51	71	61	72	36	40	·521	·541
Chatham . . .	144	4	156	5	218	7	68	6	1·373	1·5
Cheshire . . .	233	197	52	28	138	81	88	80	·592	·411
‡ Cornwall . . .	240	225	..	..	113	32	74	79	·470	·142
Dorset	87	112	6	13	58	65	51	63	·666	·580
Exeter	382	337	166	326	88	34	8	40	·230	·100
Gloucester . . .	467	457	167	128	121	85	140	134	·259	·186
‡ Haslar	328	..	..	..	356	..	123	..	1·085	..
Kent	114	72	35	45	159	71	131	137	1·394	·986
Lancaster . . .	933	832	152	116	967	641	332	323	1·036	·770
Leicester . . .	123	135	41	52	45	32	75	72	·365	·237

‡ Those discharged improved and uncured are included with the cures.

Table II.—*continued.*

Name of Asylum.	Discharged Cured.		Removed.		Died.		Remain.		Deaths, Cures being 1	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
Lincoln	200	189	196	172	124	86	57	47	·620	·455
Liverpool	1024	548	1083	746	276	144	35	18	·269	·262
Middlesex	324	314	73	51	525	436	418	569	1·620	1·388
Norfolk	308	393	19	21	326	291	63	89	1·058	·740
Northampton	105	123	33	22	55	55	116	111	·523	·447
* Norwich	43	..	62	..	28	..	68	..	1·581	1·581
Nottingham	450	399	321	232	174	77	100	100	·386	·192
* Oxford	246	..	141	..	59	..	47	..	·239	·239
St. Luke's	2575	4624	3503	4879	959	764	93	143	·373	·165
* Stafford	1336	..	875	..	612	..	134	116	.458	·458
Suffolk	245	278	82	67	188	159	112	116	·763	·571
Surrey	56	57	17	9	116	55	181	222	2·071	·964
†*‡ York	3179	..	..	..	701	..	80	72	·220	·220
„ Friends' Retreat	145	192	67	48	81	85	43	54	·558	·442
Yorkshire, W. Riding	686	771	159	218	622	430	213	238	·906	·557
WALES.										
Pembroke	3	5	..	..	3	3	10	6	1·	·6
SCOTLAND										
Aberdeen	251	272	85	169	104	87	98	86	·414	·319
* Dumfries	..	..	..	..	..	..	121	..	..	..
Dundee	247	230	129	118	107	64	105	91	·433	·278
Edinburgh	38	52	21	12	11	9	172	175	·289	·173
Elgin	5	7	9	5	3	0	15	11	·6	·000
Glasgow	769	669	556	474	233	130	196	148	·302	·194
* Montrose	324	..	129	..	255	..	47	44	·787	·787
Perth	116	124	60	53	45	29	86	64	·387	·233
IRELAND.										
Armagh	348	282	278	171	109	91	65	65	·313	·322
Belfast	424	428	99	69	152	173	142	106	·358	·404
† Carlow	160	190	..	..	49	39	93	78	·306	·205
Clonmel	154	115	30	18	46	25	62	60	·298	·217
Connaught	239	212	59	36	213	89	180	135	·891	·419
Cork	877	980	288	218	351	330	223	221	·400	·336
§ Dublin (Richmond)	357	324	169	176	193	117	137	150	·546	·361
„ (Swift's Hospital)	46	36	31	16	25	23	73	71	·543	·638
Limerick	499	468	69	65	175	129	163	178	·350	·275
Londonderry	313	336	105	85	151	143	107	74	·482	·425
Maryborough	121	156	22	22	68	38	85	85	·561	·243
Waterford	98	105	49	69	26	23	48	64	·265	·219
								Mean	·622	·458

* Sexes not distinguished.
† Those discharged improved and uncured are included with the cures.
‡ Great doubts exist as to the accuracy of the older books at the York Asylum.
§ There is some mistake here; the admissions are made to amount to 1389, and the cures, deaths, and remaining patients to 1623.

The greater number of cures, and smaller number of deaths among females must be in a great measure ascribed to their comparative immunity from epilepsy and paralysis; which, when combined with insanity, render recovery very nearly, if not quite, hopeless. It is said also that women more frequently recover from the acute stage of mania, while men die of exhaustion.

The reverse of this apparent rule is found only in the results of some of the smaller asylums, where the deaths of either sex are few. In those returns where the sexes are not distinguished we have reckoned the proportion as equal.

The tables of per-centage of cures and deaths published by the commissioners have unfortunately not been compiled upon any fixed plan. All computations, excepting upon the average number of patients in the asylum during the specified year, must be fallacious. The following tables have been made upon that principle; the blanks indicate the cases in which correct returns are wanting. Some asylums do not publish their average number of patients; others calculate the per-centage of cures and deaths upon the whole number admitted; but this is an entirely delusive method, as these numbers must be continually increasing, while the proportion of patients remaining decreases.

We have, as far as possible, made an average of all the public asylums for ten years past.

TABLE III.

Per-centage of cures upon the average number of patients in the Public Asylums for the Insane in the United Kingdom, for ten years, ending 1845.

Name of Asylum.	1836.	1837.	1838.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	Mean.
ENGLAND.											
Bedford	..	..	..	25·66	12·28	9·40	12·60	19·53	..	..	15·88
Bethlem	..	..	..	..	..	..	..	44·14	36·76	..	40·45
Bristol	19·33	25·00	19·33	18·03	30·64	20·31	23·18	10·81	58·90	..	25·05
Chatham	13·00	1·40	2·80	2·80	2·78	2·78	·00	1·49	..	..	3·38
Cheshire	..	..	..	28·90	29·35	36·00	30·26	25·94	..	..	30·09
Cornwall	..	..	..	..	..	15·43	11·56	13·10	..	..	13·36
Dorsetshire	17·40	17·95	17·65	14·25	11·27	17·05	17·41	17·71	21·92	..	17·95
Gloucester	23·88	29·01	32·44	29·44	28·03	33·19	36·03	31·12	29·10	..	30·24
Haslar	..	..	..	..	..	..	10·67	13·00	15·20	..	12·95
Kent	11·18	8·90	9·88	5·84	10·40	6·49	4·32	10·41	7·19	..	8·29
Lancaster	17·98	23·60	21·34	18·81	18·89	13·40	15·64	16·69	20·55	11·1[illegible]	17·80
Leicester	..	..	..	37·33	53·84	32·65	42·05	19·81	17·73	..	33·90
Lincoln	30·00	16·40	32·80	23·10	9·50	17·40	14·80	23·40	10·09	..	19·79
Liverpool	..	..	..	68·62	53·19	35·29	41·00	96·49	85·93	..	63·42
Middlesex	5·90	4·76	5·67	9·14	8·14	5·65	5·30	5·56	3·55	..	5·96
Norfolk	12·27	10·55	12·42	9·14	13·87	7·50	16·00	19·76	16·46	..	13·10
Northampton	..	..	..	37·33	40·19	31·85	22·39	29·31	..	..	32·21
Nottingham	23·53	24·61	23·13	18·85	20·54	21·05	24·05	26·58	..	18·32	22·29
Oxford	..	..	..	25·00	22·91	21·73	27·27	16·95	..	..	22·77
St. Luke's	..	..	..	..	..	..	..	..	44·54	..	44·54
Stafford	..	..	..	..	18·77	22·54	25·43	23·93	25·20	..	22·17
Suffolk	..	..	..	22·70	19·17	16·00	11·32	12·20	18·91	..	16·71
Surrey	..	..	..	..	..	2·62	9·46	11·39	7·06	..	7·62
York	10·75	12·19	9·41	8·04	8·02	10·00	6·17	7·05	..	5·92	8·61
„ Friends' Retreat	..	..	..	9·19	7·05	12·08	3·40	11·11	..	8·51	8·55
Yorkshire, W. Riding	20·06	19·87	19·65	21·46	18·20	15·34	15·46	16·01	..	..	18·25
WALES.											
Pembroke	..	..	..	11·11	5·00	5·26	0·00	20·00	..	..	8·27

Name of Asylum.	1836.	1837.	1838.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	Mean.
SCOTLAND.											
Aberdeen	..	..	..	..	18·57	17·36	15·17	17·21	16·76	16·39	16·91
Dundee	..	..	.	18·66	24·20	15·34	10·61	13·88	10·09	9·47	14·70
Edinburgh	..	..	..	..	..	..	..	..	30·61	..	30·61
Glasgow	..	..	..	38·99	47·36	61·79	50·00	45·66	..	..	48·76
Perth	13·00	16·37	13·71	11·50	17·77	15·00	12·00	12·00	..	8·90	13·36
IRELAND.											
Armagh	42·00	30·50	29·25	29·11	20·47	7·50	15·12	29·50	26·51	29·10	25·91
Belfast	..	26·50	27·50	29·89	23·67	26·12	29·10	36·14	26·87	26·25	28·00
Carlow	24·80	22·22	22·45	21·52	12·84	16·23	9·87	16·66	14·20	15·42	17·62
Clonmel	..	..	..	28·00	20·02	27·00	17·20	20·12	14·03	14·16	21·50
Connaught	24·16	20·26	22·70	21·29	19·67	17·42	16·10	15·19	10·35	10·35	17·74
Cork	27·65	31·90	32·00	34·80	44·17	34·80	35·22	33·80	25·33	27·31	32·69
Dublin (Richmond)	..	..	..	..	15·51	9·31	15·17	13·10	13·05	12·37	13·08
„ (Swift's Hospital)	..	..	..	10·52	12·00	9·32	7·84	8·10	7·24	..	9·17
Limerick	..	..	..	19·41	20·40	19·06	16·19	19·77	7·36	..	17·03
Londonderry	..	..	..	21·25	24·34	26·57	16·58	26·08	18.22	..	22·17
Maryborough	..	..	..	17·33	13·83	14·63	10·11	17·36	12·94	10·00	13·74
Waterford	30·23	23·91	50·56	32·00	25·75	32·11	29·56	29·66	24·36	17·94	29·60
										Mean..	21·30

TABLE IV.

Per-centage of deaths upon the average number of patients in the Public Asylums for the Insane in the United Kingdom, for ten years ending 1845.

Name of Asylum.	1836.	1837.	1838.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	Mean.
ENGLAND.											
Bedford	..	..	..	10.61	7·89	7·69	12·60	13·28	..	..	10·41
Bethlem	..	..	..	..	..	..	..	6·81	7·79	..	7·30
Bristol	9·00	5·20	3·25	9·83	29·17	23·43	20·29	16·21	13·69	..	14·45
Chatham	3·53	15·00	14·00	19·71	7·00	12·50	4·60	4·50	..	..	10·10
Cheshire	..	..	..	18·75	10·48	12·66	11·18	6·96	..	..	12·00
Cornwall	..	..	..	..	..	8·72	9·52	5·51	..	..	7·91
Dorsetshire	11.96	15·84	6·86	9·50	6·57	18·94	12·82	13·05	8·77	..	11·59
Gloucester	5·97	4·76	6·91	6·09	9·34	9·78	14·98	12·03	10·44	..	8·92
Haslar	..	..	..	..	..	..	11·65	14·00	10·40	..	12·01
Kent	9·31	13·29	7·55	10·62	9·32	7·16	8·17	16·66	9·09	..	10·13
Lancaster	18·71	26·76	16·70	12·80	16·25	12·68	12·75	11·50	10·11	11·16	14·94
Leicester	..	..	..	13·33	12·08	13·26	12·84	6·30	2·83	..	10·10
Lincoln	5·20	16·40	10·50	9·34	15·38	15·46	16·83	18·01	12·85	..	13·33
Liverpool	..	..	..	19·60	14·89	14·70	15·38	18·18	17·18	..	16·[illegible]5
Middlesex	10·84	7·88	11·99	11·53	8·26	9·39	9·65	7·01	6·40	..	9·21
Norfolk	18·40	19·25	21·11	20·12	12·71	24·70	12·57	26·35	18·90	..	19·34
Northampton	..	..	..	17·33	8·82	18·51	10·40	15·51	..	..	14·11
Nottingham	7·56	9·23	5·22	5·80	6·16	9·86	13·92	9·49	..	7·32	8·28
Oxford	..	..	..	4·54	4·16	13·04	9·09	6·79	..	..	7·52
St. Luke's	..	..	..	..	..	..	..	..	7·86	..	7·86
Stafford	..	..	..	..	13·87	13·51	15·51	10·68	13·37	..	13·44
Suffolk	..	..	..	8·64	10·36	11·00	9·90	13·61	9·45	..	10·49
Surrey	..	..	..	..	..	3·93	11·13	10·82	14·39	..	10·06

Name of Asylum.	1836.	1837.	1838.	1839.	1840.	1841.	1842.	1843.	1844.	1845.	Mean.
York	4·43	9·14	5·88	5·17	8·64	4·37	9·25	6·41	. .	6·57	6·65
„ Friends' Retreat	. .	. .	. .	10·34	1·17	4·39	7·95	4·44	3·19	. .	5·24
Yorkshire, W. Rid.	18·12	19·28	10·69	16·30	10·81	15·07	13·21	12·86	. .	. .	14·54
WALES.											
Pembroke . . .	. .	. .	. .	11·11	10·00	5·26	4·76	0·00	. .	. .	6·22
SCOTLAND.											
Aberdeen . . .	. .	. .	. .	. .	7·14	13·19	6·89	7·28	7·18	3·82	7·58
Dundee . . .	6·20	7·48	5·83	7·33	4·45	4·87	5·58	5·00	6·41	7·37	6·05
Edinburgh . .	. .	. .	. .	. .	. .	. .	. .	. .	6·80	. .	6·80
Glasgow . . .	. .	. .	. .	9·43	7·01	10·11	12·24	11·32	. .	. .	10·02
Perth	3·00	5·83	4·33	2·29	2·96	4·25	3·54	6·29	. .	3·42	3·99
IRELAND.											
Armagh . . .	8·00	11·00	10·00	9·91	4·80	6·66	5·88	9·01	9·09	10·44	8·47
Belfast	. .	18·50	12·50	7·73	11·83	9·79	10·93	7·23	8·30	15·40	11·35
Carlow . . .	3·30	3·16	8·69	3·54	6·42	5·19	7·40	5·35	4·14	4·60	5·11
Clonmel . . .	. .	. .	. .	6·12	10·68	8·57	4·80	6·25	7·89	3 33	6.80
Connaught . .	15·43	15·68	15·41	15·27	15·98	12·87	10·11	10·95	10·67	10·67	13·30
Cork	12·50	12·33	11·60	11·90	13·83	11·02	11·58	12·35	10·98	11·73	11·98
Dublin (Richmond)	. .	. .	. .	. .	5·51	6·55	5·51	8·27	6·19	6·52	6·42
„ Swift's Hospital	. .	. .	. .	3·28	8·00	4·02	4·57	6·08	6·52	. .	5·41
Limerick . . .	. .	. .	. .	6·17	8·45	4·26	6·56	5·08	5·94	. .	6·07
Londonderry . .	. .	. .	. .	14·49	12·07	12·07	7·72	9·00	10·28	. .	10·93
Maryborough . .	. .	. .	. .	4·00	13·20	4·26	7·78	4·79	4·11	4·11	5·93
Waterford . . .	3·48	3·25	3·37	7·00	1·99	4·58	5·21	7·62	8·40	8·54	5·34
										Mean . .	9·64

The mean number of cures thus appears to be 21·3 per cent., and of deaths 9·64 per cent.; but many asylums depart very widely from this standard. Bethlem, St. Luke's, and Liverpool, receive only recent cases; and in the Liverpool institution their probation is very short. The large asylums at Hanwell, Surrey, and Lancaster are consequently compelled to receive almost entirely incurables, which accounts for their small number of cures. The large number cured in the Irish asylums may be in some measure accounted for by the peculiar character of their patients. The Irish patients in English asylums usually recover rapidly, the form of disorder being frequently pure excitement, which is soon allayed by quiet, by temperance, and the orderly regulations of an asylum.

Many attempts have been made to obtain a uniform system of keeping statistical tables; at present a different plan is adopted in almost every asylum. A great improvement would be effected if every report, in addition to its information for the current year, contained a condensed statement from the opening of the institution as to admissions, cures, and deaths; and there would be little difficulty in adding the ages, forms of disease, the causes of death, and other tables. Much important information as to the most favourable and unfavourable ages, and the results of immediate and delayed admission, would be easily gained, if a reference to the last report of any asylum were sufficient to show the experience of that institution from its opening in a condensed form. No asylum has yet published any such tables; but in the numerous new asylums which will be built in the course of a few years, nothing could be more easy than to adopt them. The legislature may possibly enforce certain tables; and such a law would be exceedingly desirable, if we could hope that the practical experience of the superintendents of lunatic asylums would be allowed to be of any weight: but if the returns

are to be made out according to the fancy of men ignorant of the subject upon which they legislate, the present system, by which every superintendent follows his own discretion, is far preferable.

The following points seem to deserve attention in any plan for uniform registration:—

I. Admissions for the current year:—
1. Form of disease.
2. Causes of disease.
3. Duration of disease.
4. Age.
5. Age when first attacked.
6. Social state.
7. Station or occupation.

II. Similar returns for the whole number admitted from the opening of the asylum.

III. Cures for the current year:—
1. Form of disease.
2. Causes of disease.
3. Duration of disease.
4. Age.
5. Age when first attacked.
6. Duration of residence.
7. Per centage upon average number of patients.

IV. Similar returns for the whole number cured.

V. Deaths for the current year:—
1. Form of mental disease.
2. Causes of mental disease.
3. Duration of mental disease.
4. Age.
5. Age when first attacked.
6. Duration of residence.
7. Per centage upon average number of patients.
8. Causes of deaths.

VI. Similar returns for the whole number who have died.

VII. Number discharged uncured, improved, by request of friends, removed by parishes, or escaped, during the current year, distinguishing the reasons for removal, and the duration of residence.

VIII. Similar returns for the whole number removed or escaped.

IX. Patients remaining in the asylum:—
1. Form of disease.
2. Duration of disease.
3. Duration of residence.
4. Age.
5. Number probably curable.
6. Number probably incurable.

The registers, to contain all this information, might be of very simple form, far less complicated than those at present in use in several asylums. The sexes should be distinguished in every statement.

Registers should likewise be kept of every instance of restraint, its nature and duration, and of the duration of every seclusion; also of employment and of the value of the work done. Many others might be suggested as useful in various ways, though not strictly necessary for statistical purposes.

('Report of the Metropolitan Commissioners in Lunacy to the Lord Chancellor,' 1844; 'Statistical Tables prepared by the Metropolitan Commissioners in Lunacy,' 1844; 'An act for the Regulation of the Care and Treatment of Lunatics' (8 & 9 Vict. c. 100); 'An Act to amend the laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the maintenance and care of Pauper Lunatics, in England' (8 & 9 Vict. c. 126); 'Report of the Inspectors-General of District, Local, and private Lunatic Asylums in Ireland,' 1845; 'Returns from each District Lunatic Asylum, in Ireland,' 1845; 'Reports' of all the principal Asylums in England, Scotland, and Ireland, and information privately supplied by many of the superintendents; 'Farr on the Statistics of English Lunatic Asylums;' 'Benevolent Asylum for the Insane of the Middle Classes, Prospectus;' 'History of the York Asylum;' 'Tuke's Description of the Retreat near York;', 'Hill on the Management of Lunatic Asylums;' 'Remarks by Mr. Serjeant Adams on the Report of the Metropolitan Commissioners in Lunacy;' Personal knowledge of the Middlesex Lunatic Asylum, Hanwell.)

LYON KING-AT-ARMS. [HERALD.]

M.

MACHINERY. It is proposed to consider, in this article, the influence which is exercised by machinery upon the ge-

neral interests of mankind, and especially upon the well-being of different classes of society. There is no subject in the present age which is more deserving of attention; and none, perhaps, in which all classes are so much concerned. Whatever theoretical opinions may be entertained by speculative men, the use of machinery in aid of human labour. or, as some contend, instead of it, is rapidly increasing and cannot be restrained; it is right therefore for all men to endeavour to judge for themselves in what manner it is valuable to society, and whether the injuries attributed to it be real or imaginary. By some, every new machine is viewed as an addition to the wealth and resources of a country; by others it is regarded as a hateful rival of human industry—as iron contending with straining sinews—as steam struggling against the life and blood of man. The one view is full of hope and promise: the other is fraught with gloom and sadness. One would present society advancing in wealth and comfort; the other would show it descending faster and faster into wretchedness. But even those who believe that the inventive faculties of men have been engaged in devising for themselves a curse, would gladly be convinced that cheerful anticipations of good are consistent with sound philosophy.

The influence of machinery is of two kinds, 1st, as it affects the production and consumption of commodities; and 2ndly, as it affects the employment of labour.

As regards production, the effects of machinery have been well described to be the same "as if every man among us had become suddenly much stronger and more industrious." (*Results of Machinery*, 7th edit., p. 36.) If, by the aid of machinery, ten men can perform the work of twenty, and perform it better and more quickly, the products of their labour are as much increased as if they had really "become suddenly much stronger and more industrious," and, it may be added, more skilful. Thus production, which is the object of all labour, is more abundant, and society enjoys the results of industry at a less cost. Who can doubt that this is a great benefit, unless it be attended with evils which are not at first perceptible? No man labours more than is necessary to effect his object, and his constant desire is to contrive modes of saving his own physical exertions. A rich soil and a fine climate are universally esteemed as blessings because the people enjoy abundance with comparatively little labour. A poor soil and bad climate are evils, because the husbandman must labour much though the produce of his industry be small.

Labour without adequate results is always regarded as a curse, and almost every human invention, from the earliest times, has had for its object the saving of labour and the increase of production. Horses and other beasts of burden were made to work for man: to bear loads which otherwise they must have borne themselves; to draw the plough which otherwise their own strength must have forced through the soil. To the same object all nature has been made subservient. The stream turns the mill, and does the work of man; the wind performs the same office. A boat is built to save men the labour of carrying their goods to a distance, and it is less labour to row the boat than to carry its cargo: but rowing is laborious, and sails were invented that the wind should do the work of man. In all other matters it has been the same. Man is weak in body, and ill endowed by nature with the means of self-preservation and subsistence. Many animals are stronger and most animals are more active than himself: they can pursue their prey with more certainty, they are armed with weapons of offence and defence, and they need no shelter from the weather but that which nature has provided, their own powers and their own instinct suffice for their preservation. But man was created naked and defenceless. To live he must invent, and reason was given to him that he might force all nature into his service. His teeth and nails were powerless against the fangs and claws of the wild beast; but his hands were formed with wondrous aptitude for executing the tasks which reason set them. He invented tools and implements and weapons, and all nature became his slave. He was now

able to make his own strength effect as much as if he had become stronger and more industrious. He produced more for his own comfort and subsistence, with little labour, than the greatest exertions could otherwise have obtained for him. Every successive invention has made him more powerful, has increased his strength, and multiplied the productions of his industry; and at length the giant power of steam has peopled the world with inanimate slaves who do his work faster and better than he did it himself with the greatest labour and the most ingenious tools.

The flint and fish-bone of the savage, the tool of the workman, and the steam-engine of the manufacturer, have but one common object—to save the labour of man and to render it more productive: but that is the most perfect invention which attains this object the most effectually. Can any one doubt the advantage of abundant production? It needs but a few words to point out its benefit. Whether it be for evil or for good, we are not satisfied with the enjoyment of the common necessaries of life; we all desire comforts, luxuries, and ornament; and in proportion as we desire them do we become civilized. There are many who sneer at civilization, and unhappily it has its vices, its follies, and its absurdities; but it seems the law of our nature to advance towards that state, and with the increase of artificial wants our intellects become more active and enlightened, refinement of manners succeeds to barbarism, and all those moral qualities for which man is distinguished, become developed. We may conceive some Utopia in which all the noble parts of man's nature are cultivated, while his wants remain simple and easily satisfied, but the world we live in presents another picture. We might wish it were otherwise; but it is in vain to deny that refinement is the accompaniment and, in some degree, the consequence of riches, and brutality the condition of those people who have not been elevated by the increase of wealth. It follows, therefore, that to multiply the objects of comfort and enjoyment which human industry can produce, is to improve the condition of mankind, to raise them in the scale of moral and intellectual being, and to minister to their enjoyment of life. It is quite consistent to deprecate the vices and follies which are ever associated with our craving for new possessions, while we observe the benefits resulting from it. Throughout the world good and evil are found side by side; but the good, as we would fain believe, preponderates.

When once it is admitted that men are to be decently housed and clothed, and are to surround themselves with such comforts as they can obtain, it is clear that the more easily they can obtain them, and the more generally such possessions are enjoyed, the more completely are the objects of civilized life secured. If all men could obtain them easily, there would be no poverty, and infinitely less vice. Machinery, by diminishing the amount of labour required for the production of commodities, lowers their price and renders them more universally accessible to all classes of society. Working-men no longer toil for the rich alone, but they participate in the results of their own industry. If they desire such luxuries, "purple and fine linen" are not beyond their reach; and their dwellings are more commodious and often more elegant than were the houses of the rich three centuries ago. If this increased facility of acquiring the comforts of life had been accompanied by greater prudence and frugality, we believe that the beneficial results of machinery would have been conspicuously shown by the improved condition of all the working classes of this country; but more money has been squandered by them in poisonous spirits, within the last fifty years, than would have sufficed to place themselves and their children beyond the reach of want.* Cheap production is more beneficial to the poor than to the

* The amount spent annually upon spirits is equal to the interest of the national debt; and the amount spent within the last fifty years may be estimated at considerably more than the entire capital of the funded debt. Six millions a year are now sufficient to support all the poor of the country; and thus some idea may be formed of the prosperity of the labouring classes of the present day, if they had accumulated a fund producing an income of thirty millions beyond the wages of their labour.

rich. The rich man is certain of gratifying most of his wants, but the poor man is constantly obliged to forego one enjoyment in order to obtain another. If his shoes or his coat be worn out, his dinners must be stinted perhaps until he can pay for a fresh supply; and thus, unless his wages be reduced in consequence of the cheapness of such articles, it is beyond all question that cheapness is an extraordinary benefit to him, the money which he saves in the purchase of one cheap article is laid out upon another, and without privation or suffering he satisfies the wants which custom has made imperative. In short, he is no longer poor.

These facts are undeniable; but it is alleged that machinery not only makes articles abundant and cheap, but multiplies them beyond the wants of the world, and by causing gluts brings ruin and misery upon the working classes. For reasons explained elsewhere [DEMAND AND SUPPLY] a universal glut of all commodities is impossible: the more men produce, the more they have to offer in exchange, and their wants are only limited by their means of purchasing. But particular commodities are frequently produced in excess, and a glut of the market ensues. In causing such gluts machinery is a powerful agent, but only in the same manner as all labour would be, if applied in excess. The results would be precisely the same if too many men were employed in any department of industry; they would produce more than there was a demand for, and their goods would fall in value or be unsaleable. Commodities produced by machinery are subject to the same laws as govern all other commodities. If the supply of them exceed the demand, they are depreciated in value; but the power of producing with facility does not necessarily occasion an excess of production: it must be applied with caution, and its use be properly learned by experience. Suppose that the soil of any isolated country were extraordinarily fertile and the population very small; but that without considering these circumstances the people were to cultivate the whole of their land and bestow upon it all their skill and labour. An excess of food would be the result—more than could be eaten within the year; much would be wasted or sold without profit, and much laid up in store for another season. The husbandmen would be disappointed at the unfortunate results of their industry, but would they complain of the fertility of the soil? It would not be the soil that had caused the glut, but their own misapplied exertions; and so it is with machinery, which like a fertile soil gives forth abundance: its capabilities are known and its advantages ought to be appreciated; but if its productiveness be brought into excessive activity, it causes the evils of a glut.

The influence of machinery upon the production and consumption of commodities need not be followed any further. It increases the common stock of wealth in the world and is capable of multiplying indefinitely the sources of human enjoyment. But these benefits will be neutralized if, while it cheapens production, it has a tendency to diminish the means of employment for the people and the wages of labour;—and this leads us to the second part of our inquiry.

The invention of a machine which should immediately do the work of many men employed in a particular trade would certainly, in the first instance, diminish employment in that trade. Several men would be turned off to seek employment in other trades, and much individual suffering would be occasioned. There have been frequent instances of such a result, and so far as the immediate interests of the particular sufferers are concerned, it is an evil which cannot be too much lamented. In their case machinery is like a rival bidding against their labour, and is as injurious to them as if a fresh set of workmen had supplanted them in the service of their employer. But great as this evil is (and we would not underrate it) it is of comparatively rare occurrence and of short duration. If the invention of the machine caused no more production than the labour of the workmen had previously accomplished, the labour of a certain number of men would be permanently displaced: but as an equal quantity of goods is produced at a less cost of labour, their

price is reduced and their consumption consequently encouraged. An increased supply is thus called for and more workmen are again required in the trade. In this manner the demand for increased production corrects the tendency which machinery would otherwise have to displace labour permanently. Even the temporary displacement which frequently occurs is less extensive than might be supposed. Machines are rarely invented which at once dispense with many workmen. They are at first imperfect, and of limited power: they make the labour of the workmen more efficient; but do not become substitutes for labour. Thus, even if the demand for commodities were not increased, the displacement of labour would be very limited and deferred to a distant period: but as an increased demand almost invariably follows every successive improvement in machinery, it will be found, practically, that more operatives are employed in every branch of manufacture, after the introduction of improved machinery than before.

Of this fact we shall offer some examples presently: but here it may be necessary to allude to the case of the hand-loom weavers, which is constantly adduced in proof of the supposed evils of machinery. Their unhappy condition can scarcely be overstated, nor can it be denied that it has been caused by machinery: but it must be recollected that while they have vainly contended against machinery—like pigmies against a giant—hundreds of thousands of other classes, unaccustomed to the labour of operatives, have gained a profitable employment by working *with* it, in the same trade as themselves. No one can suppose that the labour of the hands could compete with the power of steam, and the real cause of their distress is, that instead of adapting the form of their industry to the altered circumstances of their trade, they have continued to work, like an Indian caste, with the same rude implements which their fathers used before them. Their case is the same as that of a miller who should persist in grinding corn by hand, while his neighbours were building mills upon a rapid stream which ran beside his garden. His own ignorance or obstinacy, and not the stream, would be the cause of the failure of his trade.

If the case of the hand-loom weavers be adduced as an example of the permanent displacement of labour by machinery, and if it be contended that it is the natural result of machinery to diminish employment in other trades, in the same manner, we must necessarily infer that wherever machinery has been largely introduced into any trade, the number of persons supported by it must have been diminished. We should infer that the agricultural population of this country must have been rapidly increasing, while the population engaged in those branches of manufacture in which steam-power is used must have been falling off or increasing less rapidly. The correctness of such an inference may be estimated from the following facts:—

In no trades has machinery been so extensively introduced as in the manufacture of cotton, wool, and silk, and nowhere has the population increased so rapidly as in the principal seats of these manufactures. Between 1801 and 1841, Manchester increased in population from 90,399 to 296,183, or 227·5 per cent.: Liverpool (whose prosperity has been caused by the cotton trade) increased, in the same period, from 79,722 to 264,298, or 231·5 per cent.: Leeds, from 53,162 to 151,874, or 185·6 per cent,: Bradford (York), from 6393 to 34,560, or 440·5 per cent.: Bolton, from 17,416 to 49,763, or 185·7 per cent.: Huddersfield, from 7268 to 25,068, or 244·3 per cent.: Macclesfield from 8743 to 24,137, or 176 per cent.: and Dukinfield from 1737 to 22,394, or 1189 per cent. In Scotland the same results have followed from the use of machinery. Between 1801 and 1841 Glasgow increased from 77,385 to 274,533, or 254 per cent.: Paisley, from 31,179 to 60,487, or 94 per cent.: and Greenock, from 17,458 to 36,936, or 111·5 per cent.

Thus far of the manufactures of cotton, wool, and silk. The seats of the iron and hardware trades exhibit similar results. In the same period of forty years Birmingham increased from 73,670 to 190,542, or 158 per cent.; Sheffield, from 31,314 to 68,186, or 117·6 per cent.;

Wolverhampton, from 12,565 to 36,382, or 189 per cent.; Merthyr Tydvil, from 7705 to 34,947, or 353 per cent.; and West Bromwich from 5687 to 26,121 or 359 per cent.

In this extraordinary ratio has the population increased in the seats of our staple manufactures, which by the aid of machinery have supplied the whole world with articles wrought by the industry of our people. Let us now compare these places with those agricultural counties in which machinery has exercised the least influence, and let us see if the absence of machinery has been equally favourable to the support of a growing population. In the same period, from 1801 to 1841, Devon increased 55·3 per cent.; Somerset, 59 per cent.; Norfolk, 50·9; Lincoln, 73·5; Essex, 52, and Suffolk, 49·5 per cent. The average increase of these six agricultural counties did not exceed 50 per cent. in forty years; while, setting aside the extraordinary increase exhibited in the particular towns already enumerated, the population of six manufacturing counties, viz.: Lancaster, Middlesex, York, W. R., Stafford, Chester, and Durham, including all the agriculturists, increased 112·5.

These facts prove conclusively that machinery, so far from diminishing the aggregate employment of labour in those trades in which it is used, increases it in an extraordinary degree. And not only does it give employment to larger numbers of persons, but their wages are considerably higher. We will not stop to compare the income of an agricultural labourer with that of operatives engaged in the infinite variety of trades carried on in manufacturing towns, in connexion with machinery: but it is sufficient to ask, whence has come the manufacturing population? Its natural growth would have been comparatively insignificant if thousands had not been attracted to the towns from other places. And what could have induced them to leave their homes and engage in new trades but the encouragement offered by more certain employment and higher wages?

It has been shown that machinery has had a beneficial influence upon the employment of labour in the particular trades in which it has been used, and it now remains to consider its effects upon the employment of labour in other trades. In the first place, a few of its obvious results may be noticed. For example, the manufacture and repair of machinery alone gives employment, directly and indirectly, to vast numbers of persons who are unconnected with the particular trades in which the machinery itself is used. Again, the production of all commodities is increased by machinery; and thus the producers of the raw materials of manufactures, the carriers of goods by land and sea, the merchants, the retail-traders, their clerks, porters, and others, must find more employment. It is clear also, that while the manufacturing and commercial population are thus increased by the use of machinery, the cultivators of the soil must receive more employment in supplying them with food.

In this and other ways the general employment of labour is directly extended by machinery. At the same time the application of machinery to existing branches of industry creates new trades and distributes capital into other enterprises which afford employment for new descriptions of labour. A hundred examples of this fact might be cited; of which railways and steam navigation are amongst the most remarkable; but such examples will be superfluous if it can be shown that it is the necessary result of the use of machinery to apply capital to new enterprises. It has been said that machinery cheapens production by reducing the amount of labour expended upon it: it follows that a less amount of capital with the aid of machinery will produce as much as a larger capital without such aid. A portion of capital is thus disengaged, either for increased production in the same trade, or for application to new speculations. In some way it must be employed, or it will yield no profit, and in some form or other it must be ultimately expended in labour. As long as a person can extend the accustomed operations of his own trade with a profit, he is disposed to do so; but as soon as he finds them less profitable than other investments, he changes the direc-

tion of his capital, and seeks new modes of increasing his profits.

There is no truth more certain than that the employment of labour is small or great according to the proportion which capital bears to the number of labourers. Capital is the fund which supports labour, and which must employ it or be unproductive; and thus, if in any country capital be increasing more rapidly than the population, employment will be abundant and wages high; if less rapidly, employment will be scarce and wages low. In the one case, capitalists will be bidding high for labour; in the other, labourers will be bidding against each other for employment. Accumulation of capital is therefore highly conducive to the interests of the labouring population generally, and the use of machinery is especially favourable to accumulation, as may be shown by a simple example. Suppose a man to have a capital of 10,000*l.*, which he is expending annually upon labour in a particular trade, and that his profits are ten per cent., or 1000*l.* a-year. Each year his whole capital is expended, and his means of accumulation are thus restricted to a portion of his annual profits only. But let him invent a machine to facilitate his business, and his position is immediately changed. If this machine should cost 5000*l.*, and the other 5000*l.* be still expended in labour, he may be said to have saved one half of his entire capital in a single year; for instead of spending the whole of it as before, in labour, he is possessed of a durable property which, at a small annual cost, will last for ten or probably twenty years. Nor can it be said that this saving is effected at the expense of labour; for the owner of the machine is placed in a new position in respect to his profits, which prevents him from securing to himself the difference between the amount paid now and that previously paid for labour. To gain a profit of ten per cent. it had been necessary for him, before the invention of the machine, to realize 11,000*l.* annually, being his whole capital and the profits upon it: but now, in order to obtain the same profit, it is sufficient if he realize 6500*l.* only: viz., 500*l.* profit upon his fixed capital of 5000*l.*; 500*l.* for repairs, and wear and tear, calculated at ten per cent.; and 5500*l.* to replace the sum spent upon labour with a profit of ten per cent. He would realize the whole 11,000*l.* as before, if he were able; but he is restrained by competition, which levels the profits of trade. For some time he will most probably obtain more than ten per cent. profit, and so long as he is able to do this, his means of accumulating fresh capital in addition to his machine will be increased, which capital will be expended upon additional labour. But when his profits have been reduced to their former level by competition, society has gained in the price of his goods 4500*l.* a year, being the difference between 11,000*l.* formerly realized by him, and 6500*l.* his present return. But is this amount thus gained by society lost to the labourer? Unquestionably not. As a consumer, he participates in the advantage of low prices, while the amount saved by the community in the purchase of one commodity must be expended upon others which can only be produced by labour. It cannot be too often repeated, that all capital is ultimately expended upon labour; and whether it be accumulated by individuals in large sums, or distributed in small portions throughout the community, directly or indirectly it passes through the hands of those who labour. If a manufacturer accumulates by means of higher profits, he employs more labour; if the community save by low prices, they employ more labour in other forms. So long as the capital is in existence it is certain to have an influence upon the general market for labour.

We are now speaking not of the interests of particular workmen to whose temporary sufferings caused by the use of machinery we have already adverted, but of the general and permanent interests of the working population of a country. As regards these, the statistics of British industry amply confirm all reasoning from principles, and prove beyond a doubt that machinery has had a beneficial influence upon the employment and wages of labour. Any one who will reflect upon the facts which have been noticed above, as disclosed by the Census [CENSUS], can scarcely fail to arrive at the conclusion

that without machinery England could not have supported her present population, or could only have supported them in poverty and wretchedness. Nor must the degradation of a part of the manufacturing population be thoughtlessly attributed to machinery, instead of to moral and social causes, which are independent of it. Into these causes it would be out of place, at present, to inquire; but enough has been said to show, 1st, that machinery by increasing production multiplies the sources of enjoyment, and places them within the reach of a greater number of persons; and 2ndly, that by giving increased employment to labour it enables more persons to enjoy those comforts which it has itself created. These are the elements of social prosperity, and if evils have sprung up with it, like tares with wheat, it is not machinery which has caused them. Wherever the influence of machinery has been felt, wealth has advanced with rapid strides; and though in too many cases religion, virtue, and enlightenment may have lagged behind, the tardiness of their progress is to be ascribed, not to machinery, but to the faulty institutions of men.

MADHOUSE. [LUNATIC ASYLUMS.]

MAGISTRATE, a word derived from the Latin *magistratus*, which contains the same element as *magnus* and *magister*, and signifies both a person and an office. A Roman magistratus is defined to be one who presides in a court and declares the law, that is, a judge. The kings of Rome were probably the sole Magistratus originally, and on their expulsion the two consuls were the Magistratus. In course of time other offices, as those of Praetor and Aedile, were created; and those who filled these offices were elected in the forms prescribed by the constitution, and they had jurisdictio. [JURISDICTION.] The original notion of a magistratus, then, is one who is elected to an office, and has jurisdiction.

In England the term magistrate is usually applied to justices of the peace in the country, and to those called police magistrates, such as there are in London. It has also been applied in other ways; for instance, people have sometimes said that the king is the chief magistrate in the state. But these applications of the term do not agree with its proper sense. A Roman magistratus was elected, and so far he differed from a justice of the peace; he also exercised delegated power in his jurisdiction, in which respect, as well as being elected, he differed from the king of England, who is not elected, and does not exercise delegated jurisdiction, but delegates jurisdiction to others.

MAGNA CHARTA. The terms of the compact between the feudal chief and his dependants underwent frequent changes in the middle ages. When a material alteration was made in the terms of the compact, a record was made of it in writing. These records are called Charters, in the restricted use of a term which is popularly applied to almost every species of early diplomas. The tenants of the various honours, or great tenancies in capite, are seldom without one or more charters which have been granted to them by their lords, by which exemptions or privileges are given, base services are commuted for payments in money, and the mode is settled in which justice shall be administered among them; and even in some of the inferior manors there are charters of a similar kind, by which certain liberties are guaranteed by the lord to his tenants. These charters run in the form of letters, '*Omnibus*,' &c. from the person granting; they set forth the thing granted, and end with the names of persons who were present when the lord's seal was affixed, often ten, twelve, or more, with the date of place and time of the grant.

Such a charter is that called the Magna Charta, which was granted by King John, acting in his twofold character of the lord of a body of feudatories, and king. This charter is often regarded as the constitutional basis of English liberties; but in many of its provisions it seems to have been only a declaration of rights which had been enjoyed in England before the Conquest, and which are also said to have been granted by King Henry I. on his accession. However, if it did not properly found the liberties which the English nation enjoys, or if it were not the original of those privileges and franchises which the barons (or the chief

tenants of the crown, for the names are here equivalent), ecclesiastical persons, citizens, burgesses, and merchants enjoy, it recalled into existence, it defined, it settled them, it formed in its written state a document to which appeal might be made, under whose protection any person who had any interest in it might find shelter, and which served, as if it were a portion of the common law of the land, to guide the judges to the decisions they pronounced in all questions between the king and any portion of the people.

Besides the great charter there was granted at the same time a charter relating to the forests only. There were very extensive tracts of land in England which were uncultivated, and reserved for the pleasure of the king; and there were purlieus to these forests, all of which were subject to a peculiar system of law, many parts of which were oppressive, and from some of which this charter exempted the people.

The independence and rights of the church were also secured by the great charter.

Magna Charta has been printed in a great variety of forms. There are facsimiles of a copy of it which was made at the time, and still exists in the British Museum, and of another preserved at Lincoln, and translations of it into the English language. The provisions of the Magna Charta are numerous, and some of them have fallen into desuetude. The following is the substance of the Great Charter, as given by Blackstone in his 'Commentaries,' who also wrote a treatise on it.

"The Great Charter," says he, "confirmed many liberties of the church, and redressed many grievances incident to feodal tenures, of no small moment at the time; though now, unless considered attentively and with this retrospect, they seem but of trifling concern. But besides these feodal provisions, care was also taken therein to protect the subject against other oppressions, then frequently arising from unreasonable amercements, from illegal distresses or other process for debts or services due to the crown, and from the tyrannical abuse of the prerogative of purveyance and pre-emption It fixed the forfeiture of lands for felony in the same manner as it still remains; prohibited for the future the grants of exclusive fisheries, and the erection of new bridges, so as to oppress the neighbourhood. With respect to private rights: it established the testamentary power of the subject over part of his personal estate, the rest being distributed among his wife and children; it laid down the law of dower as it hath continued ever since; and prohibited the appeals of women, unless for the death of their husbands. In matters of public policy and national concern, it enjoined an uniformity of weights and measures; gave new encouragements to commerce by the protection of merchant-strangers, and forbad the alienation of lands in mortmain. With regard to the administration of justice: besides prohibiting all denials or delays of it, it fixed the Court of Common Pleas at Westminster, that the suitors might no longer be harassed with following the king's person in all his progresses; and at the same time brought the trial of issues home to the very doors of the freeholders, by directing assizes to be taken in the proper counties, and establishing annual circuits, it also corrected some abuses then incident to the trials by wager of law and of battle; directed the regular awarding of inquests for life or member; prohibited the king's inferior ministers from holding pleas of the crown, or trying any criminal charge, whereby many forfeitures might otherwise have unjustly accrued to the exchequer; and regulated the time and place of holding the inferior tribunals of justice, the county court, sheriff's tourn, and court-leet. It confirmed and established the liberties of the city of London, and all other cities, boroughs, towns, and ports of the kingdom. And lastly (which alone would have merited the title that it bears of the *Great* Charter), it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by the judgment of his peers or the law of the land."

Such a concession from the king was not gained without a violent struggle; in fact he was compelled to yield it by an armed force, consisting of a very large

portion of the baronage, which he was unable to resist. The names of the chiefs are preserved by the chroniclers of the time, and in the charter itself; and whenever mentioned they call up to this day a mingled feeling of respect and gratitude, the respect and gratitude which men pay to those who have obtained for them the extension of political rights. They appear the patriots of a rude age; and the mists of distance and antiquity obscure to us the selfishness and the other evils (if such existed) which were manifested in the contest. The first name is that of Robert Fitz Walter, who belonged to the great family of Clare. The title given to him as head of the host was Marshal of the Army of God and of the Holy Church. Next to him come Eustace de Vesci, Richard de Percy, Robert de Roos, Peter de Brus, Nicholas de Stutevile, Saier de Quenci, earl of Winchester, the earls of Clare, Essex, and Norfolk, William de Mowbray, Robert de Vere, Fulk FitzWarine, William de Montacute, William de Beauchamp, and many others of families long after famous in English history, the progenitors of the antient baronial houses of England.

The charter was sealed in the open field, at a place called Runnymede, between Windsor and Staines; but it was not merely by an accidental meeting of two armies at that place that this act was done there, for it appears by Matthew of Westminster that Runnymede was a place where treaties concerning the peace of the kingdom had been often made. All was done with great solemnity. The memorable day was June 5, 1215.

What was unwillingly granted, it could scarcely be expected would be religiously observed. John himself would gladly have infringed or broken it, as would his son King Henry III., but the barons were watchful of their own privileges, those of the church, the cities, the boroughs, and of the people at large; and King Henry was led to make one or more solemn ratifications of the charter. To keep the rights thus guaranteed fully in the eyes of the people a copy was sent to every cathedral church, and read publicly twice a year.

The work of Sir William Blackstone is entitled 'The great Charter and Charter of the Forest, with other authentic Instruments; to which is prefixed an Introductory Discourse concerning the History of the Charters,' Oxford, 1759, 4to. The late Board of Commissioners on the Public Records caused to be engraved and published an exact fac-simile of the charter, from a copy preserved in the archives of the cathedral church of Lincoln, with other of the greater charters. In the first volume of their work, entitled 'The Statutes of the Realm,' these charters are all printed, with English translations of them.

MAIM or MAYHEM, according to the old law, is such an injury done to the body of a man by force as deprives him of the use of some member which is serviceable in fight as a means of offence or defence. If a man's eye be beaten out, or he is forcibly deprived of a finger by another person, the offence is maim. But the distinction between legal maim and maiming of the body in the common meaning of that term is now obsolete, or nearly so. The offence of maiming is now punished under 7 Wm. IV. & 1 Vict. c. 85. [LAW, CRIMINAL.]

The offender, besides being punished in the name of the crown, is liable to an action of trespass by the injured party, who may in such action recover damages. If the damages given by the jury are not commensurate to the loss, the court may increase them on inspection of the maim.

MAINTENANCE is defined to be when a man maintains a suit or quarrel to the disturbance or hindrance of right; and if he who maintains another is to have by agreement part of the land or debt, &c. in suit, it is called Champerty. Maintenance was an offence at common law, and has also been the subject of several statutes. By the 32 Hen. VIII. c. 9, no person shall bargain, buy or sell, or by any means obtain any pretended rights or titles to any lands, unless he who bargains or sells, or his ancestors, or they by whom he claims the same, have been in possession thereof, or of the reversion or remainder thereof, or taken the rents and profits thereof, by the space of a year next before the bargain or sale, on pain of the seller forfeiting the whole

value of the lands so bargained or sold, and the buyer, knowing the same, also forfeiting the value of such lands. The professed object of the statute was to prevent the inquietness, oppression, and vexation which the preamble mentions as the consequence of the buying of titles and pretended rights of persons not being in possession of the lands sold.

A man may assign his interest in a debt after he has instituted a suit for its recovery, and such assignment of itself is not maintenance. But if the assignment be made on condition that the assignee prosecute the suit, or if the assignee give the assignor any indemnity against the costs of the suit, already incurred or to be incurred, this makes it maintenance.

(Comyn's *Digest*, 'Maintenance.')

MAINTENANCE, SEPARATE. [ALIMONY; DIVORCE.]

MAJOR, a field-officer next in rank below a lieutenant-colonel, and immediately superior to the captains of troops in a regiment of cavalry, or to the captains of companies in a battalion of infantry. His duty is to superintend the exercises of the regiment or battalion, and, on parade or in action, to carry into effect the orders of the colonel. The major has also to regulate the distribution of the officers and men for the performance of any particular service; and he has a temporary charge of the effects appertaining to any individual of the corps in the event of the absence or death f such individual.

This class of field-officers does not appear to have existed before the beginning of the seventeenth century; and, at first, such officers had the title of *serjeants-major*, a designation borne at an earlier time by a class corresponding to that of the present majors-general of an army. (Grose, vol. i. p. 243.)

No mention is made of either lieutenants-colonel or majors as field-officers in the account of Queen Elizabeth's army in Ireland (1600). But Ward, in his 'Animadversions of Warre' (1639), has given a description of the duties of the latter class, under the name of serjeants-major, from which it appears that those duties were then nearly the same as are exercised by the present majors of regiments. They are stated to consist in receiving the orders from the general commanding the army; in conveying them to the colonel of the regiment, and subsequently in transmitting them to the officers of the companies; also, in superintending the distribution of ammunition to the troops, and in visiting the guard by day or night.

A brigade-major is a staff-officer who performs for a brigade, or in a garrison, duties corresponding to those of a major in a regiment or battalion.

The prices of a major's commission are,—

		Daily Pay.		
In the Life and Royal Horse Guards . .	£5350	£1	4	5
In the Dragoons . .	4575	0	19	3
In the Foot Guards (with the rank of colonel) . . .	8300	1	3	0
In the regiments of the line . . .	3200	0	16	0

A serjeant-major of a regiment is a non-commissioned officer, who in general superintends the military exercises of the soldiers: on parade, he has the care of dressing the line.

MAJOR-GENERAL. [GENERAL.]

MALICIOUS INJURIES TO PROPERTY. At common law, mischief perpetrated with whatever motive against the property of another was not punishable criminally, unless the act amounted to felony, was accompanied with a breach of the peace, or affected the public convenience. In other cases the offender was liable only to an action for damages at the suit of the party injured. But the legislature has, at different times, interposed to repress, by penal enactments, injuries to private property of an aggravated nature, committed with the malicious intention of injuring the owner of such property. The different statutory provisions against mischievous acts done wilfully and maliciously were modified, as well as consolidated, by 7 & 8 Geo. IV. c. 30, which also contains a provision rendering it immaterial whether the malice of the offender be against the owner of the property or otherwise. [LAW, CRIMINAL.]

The enactments in this statute with respect to the offence of arson have been

repealed; and now, by 7 Wm. IV. & 1 Vict. c. 89, § 2, it is felony punishable by death to set fire to a dwelling-house, any person being therein. [LAW, CRIMINAL, p. 189.]

For the protection of shipping against malicious mischief several statutory provisions have been made. [LAW, CRIMINAL.]

By 7 Wm. IV. & 1 Vict. c. 89, § 5, it is made felony punishable by death to exhibit false lights or signals with intent to bring any ship or vessel into danger, or to do anything tending to the immediate loss or destruction of ships or vessels in distress. [LAW, CRIMINAL, p. 189.] And by the 4th section it is made felony punishable by death to set fire to, cast away, or destroy any ship or vessel, either with intent to murder any person or whereby the life of any person shall be endangered.

The legislature has in certain cases given relief to persons whose property has been subject to petty but wilful aggressions, by summary conviction (7 & 8 Geo. IV. c. 30, § 24) before a justice of the peace, on which the offender must forfeit and pay such sum of money as shall appear to him a reasonable compensation for the damage, injury, or spoil committed, not exceeding 5*l.*, to be paid, in the case of private property, to the party aggrieved, except where such party is examined in proof of the offence; and in such cases, or in the case of property of a public nature, or wherein any public right is concerned, the money is to be applied towards the county-rate or borough-rate; and if such sums of money together with costs (if ordered) are not paid either immediately or within such period as the justice may appoint, the justice may commit the offender to the common gaol or house of correction, to be kept to hard labour for any term not exceeding two calendar months, unless such sum and costs be sooner paid. This enactment does not extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, or to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game.

By the 28th section any person found committing any offence against this act, whether punishable upon indictment or upon summary conviction, may be immediately apprehended without a warrant, by any peace-officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace.

These summary proceedings before magistrates must be commenced within three calendar months from the commission of the offence. The capital felony of destroying ships of war is mentioned in LAW, CRIMINAL, p. 189.

All the other malicious injuries to property except those here enumerated are non-capital felonies; and the punishments for these several offences, and the statutes relating to them, are mentioned in LAW, CRIMINAL, under 'Felonies, Non-capital,' and 'Misdemeanours,' p. 190, 194, 196, 198, 201, 202, 203, 206, 215.

The provisions of the law of France with respect to malicious injuries to property are to be found in the 3rd section of liv. iii. of the Code Pénal, entitled 'Destructions, Dégradations, Dommages.' Capital punishment is inflicted only against those who set fire to buildings, ships, warehouses, wood-yards (chantiers), forests, underwoods, or crops growing or cut down, or to any combustible matter placed so as to communicate fire thereto. Minor offences in forests are provided for by titre 12 of the Code Forestier.

MANCI'PIUM, MANCIPA'TIO. The right apprehension of these terms is of some importance to those who study Roman authors. The following is the description of *Mancipatio* by Gaius (i. 119, &c.):—"Mancipatio is a kind of imaginary sale, and is a peculiar privilege of Roman citizens. It is effected in the following manner:—There must be present not fewer than five witnesses, Roman citizens, of full age, and also another person, of the same class and condition, to hold the brazen scales, who is called *libripens*. The person who receives *in mancipio*, taking hold of the thing, says, 'I affirm that this man is my property, according to Quirital Law, and I have purchased him with this money (æs) and

these brazen scales.' He then strikes the scales with a piece of money, and gives it to him from whom he receives *in mancipio* as the price. In this manner both slaves and free persons are mancipated, as well as animals, which belong to the class of things *mancipii*, or *mancipi*, such as oxen, horses, mules, asses; lands also (prædia), as well in the city as in the country, which are of the class *mancipi*, such as are the Italic lands, are mancipated in the same way. The mancipatio of lands differs from that of other things in this respect only, that persons, whether free or slaves, cannot be mancipated unless they are present, it being necessary that he who receives *in mancipio* should take hold of that which is given him *in mancipio:* whence in fact comes the term *mancipatio*, signifying that the thing is taken (capitur) by the hand (manu); but it is the practice to mancipate lands which are at a distance."

In this passage Gaius describes generally what "mancipati" is, and by implication, what things admit of "mancipatio," or, in other words, what things are "mancipi." He was led to these remarks by that part of the subject matter of his text which treats of the rights of persons, or *status;* and he prefaces his description of "mancipatio" by stating that all children who are in the power of their parents, and the wife who is in that peculiar relation to her husband when she is said *in manu viri esse* [MARRIAGE, ROMAN], are things *mancipi*, and may be mancipated in the same way as slaves. [ADOPTION.]

All things, as subjects of ownership, were either "res mancipi" or "res nec mancipi:" and there is, observes Gaius (ii. 18, &c.), "a great difference between things 'mancipi' and things 'nec mancipi.' The latter can be alienated by bare tradition or delivery, if they are things corporeal, and therefore susceptible of delivery. Thus the property in a garment, gold, or silver, may be transferred by bare tradition. Lands in the provinces may be transferred in the same way." Thus "mancipatio" was the proper term for expressing sale or transfer of things "mancipi;" and "traditio" for expressing the transfer of things "nec mancipi." (Ulpian, *Frag.* tit. 19.)

The mancipatio was that form of transfer of which we find similar examples in the early history of most countries, and implied originally an actual seisin of the thing transferred. No writing being required, it was necessary that there should be some evidence of the transfer, and such evidence was secured by the mode of transfer which the law required. So far as relates to land, mancipatio in its origin may be presumed to have been equivalent to the feoffment with livery of seisin. [FEOFFMENT.]

There was another mode of alienating things "mancipi," by the form called *in jure cessio*, which, according to Ulpian, was applicable also to things "nec mancipi." The *in jure cessio* was a fictitious action before a competent magistrate at Rome, or a prætor, or before a praeses in a province. The purchaser claimed the thing as his, and the seller either acknowledged his claim or made no defence, upon which the magistrate gave judgment for the purchaser. This form was in effect and was called 'legis actio.' (Gaius, ii. 24.) Its great resemblance to the fictitious suit formerly in use in our own system, called a Fine, might lead to the conjecture that the notion of a Fine was taken by the early practitioners in our courts from the Roman Law; and that this hypothesis is exceedingly probable will be the more apparent, the further any person examines into the connection between the early English and the Roman Law. The *in jure cessio* has apparently a closer resemblance to a Fine than the *transactio* of the Roman Law, to which some writers would refer as the origin of the Fine.

Mancipatio, as Gaius observes (ii. 26), was more in use than the *in jure cessio*, inasmuch as it was easier to transact the business with the assistance of a few friends than to go before a prætor, or a praeses.

Easements (*jura prædiorum*, otherwise called *servitutes*) could be transferred in the case of lands in the city only by the *cessio in jure;* but in the case of lands in the country, also by *mancipatio*. But this observation applies only to Italic

lands; in the provinces, rights of this kind, such as right of road, of conveying water, &c., were matter of contract. [EASEMENT.]

MANDA'MUS is a writ by which the Court of King's Bench, in the name of the reigning king or queen, commands the party to whom it is addressed to do some act in the performance of which the prosecutor, or person who applies for or sues out the writ, has a legal interest; that is, not merely such an interest as would be recognised in a court of equity or in a court of ecclesiastical jurisdiction, but an interest cognizable in a court of common law; the right must also be one for the enforcing of which the prosecutor has no other specific legal remedy. Thus, a copyholder can transfer or alien his customary tenement or estate [COPYHOLD] in no other manner than by surrendering it into the hands of the lord of the manor to the use of the purchaser or surrenderee. The courts of common law formerly took no notice of the right of the surrenderee to call upon the lord for a grant or admittance, and the court of king's bench therefore left the party to seek his remedy in a court of equity, and would not interfere by granting a mandamus. But the obligation on the part of the lord to admit the surrenderee is not merely an equitable liability, because this mode of tranferring property of this nature is founded upon ancient custom, and rights dependent upon custom are matters of common-law cognizance. Of late years the court of king's bench appears to have taken this view of the subject, and has awarded writs of mandamus in all cases where the lord has refused to admit the party to whose use a surrender of the copyhold has been made. Again, the duty of parishioners to assemble in vestry for parochial objects, whether those objects be of a temporal or spiritual nature, is a common-law duty, and a mandamus will be granted to compel the parishioners to meet. But when they are met, the power of the court to interfere further by mandamus depends upon the nature of the act which the parishioners have to do. If the provisions of a statute are to be carried into execution, the act to be done, whatever its nature, is considered a temporal matter, because the construction of statutes belongs especially to the courts of common law. But if the object for which the vestry are assembled be one purely of ecclesiastical cognizance, as the setting up of bells, the purchase of books or vestments necessary for divine service, or the making provision for the repairs of the fabric of the church (delinquencies in which matters are punishable by ecclesiastical censures), the court of king's bench, has no jurisdiction. Again, the court can by mandamus compel the visitor of an eleemosynary foundation to hear an appeal, but it has no further authority than "to put the visitorial power in motion." It cannot compel him to do any specific act as visitor.

The term "mandamus" (we command) is found in a great variety of writs, and those usually distinguished by this name by the old law writers are totally different from the modern writ of mandamus, which appears to be nothing more than the ancient "writ of restitution" enlarged to embrace a great variety of objects, that writ being adapted merely to the purpose of restoring a party to an office from which he has been unjustly removed.

The writ of mandamus is now granted not only to restore a man to an office from which he has been wrongfully amoved, but also to admit to an office to which the party has been duly elected or appointed. It lies for a mayor, recorder, alderman, town-councillor, common-councilman, burgess, and town-clerk,—for a prebendary, master of a free-school, parish-clerk, sexton, and scavenger,—to hold a court-baron, court-leet, or a borough court of record,—to justices, to do an act within the scope of their authority, and which will not subject them to an action,—to restore a graduate in a university to degrees from which he has been suspended—to a corporation, to pay poor-rates where they have not sufficient destrainable property,—to parish officers, to receive a deserted infant,—to permit inspection of documents of a public nature in which the party is interested,—to appoint overseers of the poor,—to swear in churchwardens,—to proceed to the election of a corporate officer,—to grant probate or letters of administration,—to affix the common seal

to an answer agreed to by the majority of the members of a corporation aggregate, —and to allow a poor-rate, in which case the rule for a mandamus is absolute in the first instance.

The mandamus is said to be a prerogative writ; by which is meant,—either that the power to award it is not delegated by the crown to the ordinary judges between party and party, that is, the justices of the common pleas, but is reserved for that court in which the king is supposed to be personally present,—or that it is a writ of grace and favour, granted according to discretion, and not a writ of right, that is, not such a writ as the party applying for it has a right to call upon the court to issue under the clause of Magna Charta by which the king binds himself not to refuse or delay justice or right.

In order to obtain a Mandamus the applicant lays before the court the affidavit of himself or of others presenting the facts upon which his right and interest in the thing to be done, and his claim or title to the remedy, are founded. Upon this application the court, if it see a probable cause for interference, grants a rule calling upon the party against whom the writ is prayed, to show cause why such writ should not be awarded. At the appointed time the party so called upon either does not appear, in which case the rule is made absolute, and the mandamus is awarded as prayed, or he appears and resists the rule, either by insisting upon the insufficiency of the facts disclosed by the affidavits upon which the rule was obtained, or by producing other affidavits which give a different aspect to the transaction. If the resistance be effectual the rule is discharged; if not, the mandamus is awarded.

The writ, in the first instance, issues in an alternative form, requiring the party to do the act, or to show why he has not done it. The party may therefore make a return to the writ saying that he has not done the act required for such and such reasons. Where the reasons returned are insufficient in law, the court quashes the return, and awards a peremptory mandamus requiring the party absolutely, and without allowing him any alternative, to do the act. Where the answer is apparently sufficient, the mandamus is at an end; and if the statements are untrue, the remedy is by action on the case for a false return, though in order to avoid expense and delay the party is allowed in some cases, by the statute 9 Anne, c. 20, and now in all cases, by 1 Wm. IV. c. 21, to engraft an action upon the mandamus itself by traversing the return, that is, by putting in a plea contradicting the allegations contained in such return. (Comyns's *Digest*; Selwyn's *Nisi Prius*; 1 Vict. c. 78.)

MANDATARIUS. [AGENT.]

MANOR (*Manerium*). At the time of the Norman conquest manerius or manerium (from *manere*, to dwell) denoted a large mansion or dwelling. The "manerium" of the Exchequer Domesday is the "mansio" of the Exeter Domesday, each being therefore the equivalent of the Anglo-Saxon or French term used by the officers who made the survey. In France the corresponding word "manoir" has never acquired any other signification than that of a mansion; and an estate possessing the peculiar incidents of an English manor never became so common in France as to require a specific name.

The modern English manor derives its origin from subinfeudation [FEUDAL SYSTEM], as it existed before the modifications of the system of tenures introduced in 1225 by Magna Charta, and the still more important alterations made in 1290 by "The King's Statute of buying and selling Lands," commencing with the words "Quia Emptores Terrarum," and in 1324 by the statute 'De Prærogativâ Regis,' by which statutes, the process of subinfeudation, or of granting land in fee-simple, to be held by the grantee as a tenant or vassal to the grantor, was stopped.

Where a subinfeudation made by A to B extended to the whole of A's land, nothing remained in A but a seigniory with the ordinary feudal incidents of tenure, together with such rents or other services as might have been reserved upon the creation of the subtenure. This interest in A was a seigniory in gross, that is, a seigniory held by itself, unattached to any land, an incorporeal seigniory, termed by

the French feudists "un fief *en l'air.*" But in the case of subinfeudation of *part* of the land, the ordinary mode of proceeding was this:—A, a large proprietor, having a mansion and land at Dale, created a subtenure in a portion of his land by granting such portion to B and his heirs, to hold of A and his heirs, as of A's manerium (mansion) of Dale, which words created an implied condition that B should perform the service of attending, with the other tenants of A holding by virtue of similar subinfeudations, at A's halmote of Dale, that is, at A's court meeting in the hall of A's mansion at Dale (afterwards called A's court-baron of his manor of Dale), for the purpose of deciding judicially all disputes among A's free tenants holding of him by the same tenure as B, in respect of their lands so holden, and also all actions brought by persons claiming such lands.

Upon this subinfeudation being effected, A would continue to be the owner of the mansion of Dale, and of that part of the land of Dale, of which he had made no subinfeudation, in dèmesne (in dominico suo,)—as his own immediate property; and he would have the seigniory of lands of which B and others had been subinfeoffed, as a seigniory appendant or legally annexed to the mansion of Dale, and to the demesnes of Dale, of which the mansion formed part.

This conjoint or complex estate, taking its denomination from the mansion (manerium), which was considered as its head, and which, in the language of the Year Book of P. 14, Edward II. (Maynard, 426), "drew to itself all the appendancies," by degrees acquired the name of Manerium or Manor.

A Manor therefore *originally* consisted of lands in demesne, upon which the lord had a mansion, and to which lands and mansion, and more especially to the latter, there was appendant a seigniory over freeholders qualified in respect of quantity of estate (*i. e.* by a tenancy for life at the least, if not a tenancy in fee-simple), and sufficient in point of number to constitute a court-baron. These freeholders were called vavasors, and their lands "tenemental lands," *i. e.* lands granted out in tenure, to distinguish them from the lord's demesnes. These tenemental lands, anciently known by the denomination of vavassories, though held of the manor and within the seigniory (or, as it was usually termed, within the fee) of the lord, were not considered as part of the manor; but the services issuing from such tenemental lands were part of the manor and essential to its existence.

Afterwards it was sufficient if the site of a mansion at which the services had been reserved, or, as it was called, the site of the manor, formed part of the demesnes; and, at last, this vestige of the origin of the name of the estate was dispensed with, and if the lord retained any portion of the land, so that there would be some demesnes to which the seigniory over the freehold tenants of the manor, and the services rendered by them, might continue to be appendant, the compound estate called a manor was not dissolved, whether it could be shown that a mansion had ever stood on the part of the demesnes or lands retained or not, and even if the lord had aliened and severed from his demesnes the spot on which the mansion had once stood.

A Manor is commonly said to consist of demesnes and services, which have been called the "material causes;" but other things may also be members and parcel of a manor.

1. The demesnes are those lands within the manor of which the lord is seised, *i. e.* of which he has the freehold, whether they are in his own occupation, or in that of his tenants at will, or his tenants for years. The tenants at will have either a common-law estate, holding at the joint will of the lessor and of the lessee, or a customary estate, holding at the will of the lord according to the custom of the manor. [COPYHOLD.] The tenancy for years of lands within a manor is, in modern times, usually a common-law estate.

2. The services of a manor are, the rents and other services due from freehold tenants holding of the manor. These services are annexed or appendant to the seigniory over the lands holden by such freehold tenants. The lands holden by the freeholders of the manor are holden *of* the manor, but are not *within*, or

parcel of, the manor, though within the lord's fee or manorial seigniory.

Copyholds, being part of the demesnes, are not held of the manor, but are within and parcel of the manor.

3. But though a perfect legal manor cannot exist without demesnes and services, other incorporeal hereditaments, which are not services, may be parcel of the manor, as advowsons, rights of common, rights of way, and other things.

In general, no person can hold courts of justice, except under authority derived from the crown, either by actual grant or by prescription; and the crown may at any time issue process for the purpose of instituting an inquiry by what authority (quo warranto) a subject holds a court of justice. It is a distinguishing feature of the feudal system, to make civil jurisdiction necessarily, and criminal jurisdiction ordinarily, co-extensive with tenure; and accordingly there is inseparably incident to every manor a court-baron (curia baronum), being a court in which the freeholders of the manor are the sole judges, but in which the lord, by himself, or more commonly by his steward, presides. The jurisdiction of the court-baron extends over all personal actions in which the debt or damages sought to be recovered are under 40*s*.; and real actions in respect of lands held of the manor could not have been brought in any other court, except upon an allegation that the lord of the manor had in the particular instance granted or abandoned his court to the king (quia dominus remisit curiam). To a quo warranto therefore for holding a court-baron, it is a sufficient answer—that the defendant has a manor. As this court was essential to the due administration of justice in questions respecting the right of property held of the manor arising amongst the lord's tenants, there could never have been a perfect manor without a sufficient number of freeholders to constitute the court-baron, which number must consist of three, or two at the least; three being necessary where the litigation was between two of the freeholders. The practice, which prevailed in France, &c., of *borrowing* suitors from the court of the lord paramount, to make up a sufficient number of freeholders to constitute a court, does not appear to have been adopted in England.

4. Some things are popularly supposed to be incident to a manor, which have no necessary connexion with it. Thus the ownership of wastes within the district over which the manor extends is frequently called a *manerial* right, though the right and interest of the lord in wastes, over which no acts of ownership can be shown to have been exercised by him, rests entirely upon the presumption in favour of the lord, arising out of the circumstance of his being the present owner of the demesne lands, and the former owner of the tenemental lands which adjoin such wastes. The same presumption would arise in favour of any other owner of an extensive district. It is however true that lords of manors in their original grants, both to their freehold and to their copyhold tenants, usually reserved the waste lands, giving to the freeholders and copyholders merely rights of common over wastes. Hence it arises that, in point of fact, manors, in proportion to their extent, frequently contain a much larger portion of wastes than other estates. From this cause, and from the circumstance of manors being generally large properties in the hands of the nobility and gentry, several statutes have given to lords of manors privileges in respect of game, and the appointment of gamekeepers, which other estates, though they may be of greater extent and value, do not enjoy. [GAME LAWS.] But except in particular cases in which a free-chase, free-warren, or legal park is, by royal grant or prescription, annexed to a manor, the lord of a manor has no privilege, in respect of game, beyond what is given him by these modern statutes.

Copyholds are a common incident to the demesnes of a manor, but there are many manors in which this species of tenure does not appear to have ever existed, and many more in which it has been long extinct; and though there are now no copyholds unconnected with a manor, the custom of demising by the lord's rolls appears to have formerly been common to every lord or freeholder who had demesnes which were held in villenage. So the right to have a court-leet is

a royal franchise [LEET], under which the grantee holds a court of criminal jurisdiction in the king's name, over the resiants (residents) within a particular district. This privilege may be granted to persons who are not lords of manors; and where the grantee has a manor, the limits of the manor and of the leet are not always co-extensive.

Since the statutes of Quia Emptores and De Prærogativâ Regis no manors have probably been created; and it has been commonly said that no new manor could afterwards be created. But as a proposition of law this appears to be stated too broadly.

Practically, however, no entirely new manors are now created; but where, upon the partition of a manor, part of the demesnes and part of the services, including suit of court of a sufficient number of freehold tenants to constitute a court-baron, are assigned to one parcener, joint-tenant, or tenant in common, and other parts of the demesnes and services to another parcener, &c., each party has a manor, and may hold a court-baron. It is also said that if a manor extends into several townships, the lord may create separate manors by conveying the demesnes and services in township A to one, and those in township B to another.

A manor is not destroyed by the loss of those incidents which, though members, and forming part of the manor, are not, like demesnes and services, the "material causes of a manor." Nor will the legal existence of the manor be affected by the alienation of *part* of the demesnes, or by the alienation or extinction of *part* of the services, or by the extinction of all the copyholds. But upon the alienation of all the demesnes, or the alienation or extinction of all the services, the manor ceases.

Manors in Ancient Demesne are those manors which, though now mostly in the hands of subjects, formed part of the royal domain at the time of the Conquest, and are designated in Domesday as "terra regis." The peculiarity of these manors is, that there exists in them a particular class of tenants possessing certain customary privileges, supposed, by Lord Coke and others, to be derived from the indulgence of the crown in matters "pertaining to the king's husbandry." They were formerly called "tenants in socage in ancient tenure," but are now commonly known as "tenants in ancient demesne," a term not in itself very accurate, since all tenants within these ancient demesne manors, whether copyholders or leaseholders, and even the lord himself, are strictly speaking tenants *in* ancient demesne. In these customary tenures the freehold is not in the lord, but in the tenant, who is therefore called a customary *freeholder;* and it does not appear to be necessary to the continuance of the manor that there should be any other freehold tenants, though lands may be held of a manor in ancient demesne by the ordinary freehold tenure, which lands are called lands in frank-fee by way of distinguishing them from the customary freeholds held by the "tenants in socage in ancient tenure," now called "tenants in ancient demesne."

Lord Coke enumerates six privileges as annexed for this peculiar tenure. (4 *Inst.*, 269; Bac., *Abr.*, 'Ancient Demense;' Com., *Dig.*, 'Ancient Demense.')

Manors in Border Counties.—The exposed state of the northern borders of England, liable to hostile incursions in time of war, and scarcely less in times of nominal peace, created a peculiar species of tenure in the manors in the four northern counties. Persons holding by this tenure are called customary freeholders; though here the *freehold* is in the lord, and the timber and mines belong to him, and not (as in the tenure in ancient demesne) to the tenants; but they are so called because they are allowed the privilege of passing their estates, as freeholders do, by feoffment and livery, a privilege perhaps derived from the irregularity with which the customary courts of the manor were held, and from the necessity of allowing persons whose tenure of land and of life was so uncertain to make immediate dispositions of their property.

Manors, Assessionable, a term peculiar to that part of the domain of the duke of Cornwall which is situate within the county of Cornwall, consisting of seventeen manors, namely, Launceston, Tre-

maton, Tyntagell, Restormel, Stoke-Climsland, Tybeste, Tewington, Helston-in-Kerrier, Moresk, Tywarnhaile, Penkneth, Penlyn, Rellaton, Helston-in-Trigshire, Liskeard, Calstock, and Talskydy.

The earls and dukes of Cornwall, and, when no earl or duke, the crown, have sent from time to time (commonly every seven years) certain persons commissioned to visit these manors in succession, and to *assess* the lord's demesnes, *i.e.* to let them at such rents and upon such terms as might appear to them to be advantageous to the duchy. The courts held by the commissioners for the purpose of exercising the authority thus delegated to them were called *assessions*, or courts of *assession*. The course usually was to let the land until the next assession. From the conventions (covenants or engagements) entered into by the persons to whom those demesnes were so arrented, the interest demised was called a tenure *in conventione*, and the tenants were styled conventionaries. These demises were made both to freemen and villeins; the former being called free conventionaries, the latter villein or native conventionaries. The latter class appear to have become extinct in the sixteenth century.

By degrees the conventionary tenants acquired an inheritable interest in the certainty of the renewal of their holdings in favour of themselves and their descendants at each successive assession. The conventionary tenant thus acquired, like a copyholder of inheritance, an interest freehold in point of duration, without a freehold tenure.

In conventionary tenements the minerals belong to the lord, and not to the customary tenant; as it was held upon a trial at bar in 1829, which lasted seven days (*Rowe* v. *Brenton*, 3 Mann. and Ryl., 133-364.)

MANSION. [MANOR.]

MANSLAUGHTER. [LAW, CRIMINAL; MURDER.]

MANUMISSION. [SLAVE.]

MARINE INSURANCE. [SHIPS.]

MARINES, men embodied to serve as soldiers on board of ships of war in naval engagements; and on shore, in the event of a descent being made upon an enemy's coast. In the British service they also assist occasionally in performing some of the operations connected with the working of the ship; they cannot however be be sent aloft at the command of a naval officer.

Originally in this country, as well as in France, the national fleets were composed of merchants' ships, which were armed on occasion for war; and then there were no soldiers particularly destined for the naval service. The first troops of this kind in France were men skilled in the practice of the useful trades, who, when unemployed by the government, lived on shore on half-pay; receiving only the full pay when called upon to serve at sea. This regulation did not, however, long subsist; and, subsequent to the administration of Cardinal Richelieu, companies of marine soldiers have been constantly retained on full pay.

It is not precisely known at what period distinct corps were appointed, in Britain, to this branch of the public service. In 1684 mention is made of the Duke of York's maritime regiment of foot; and in the reign of William III. several regiments were placed on the establishment of the navy, but these were subsequently disbanded. At that time the marine soldiers seem to have been retained as persons in training to become good seamen; and in Burchet's 'Naval History,' quoted by Grose ('Mil. Antiq.,' vol. i.), it is said that they were discharged from the regiments and entered on the ship's books as foremast-men as soon as they became qualified to serve as such.

In the beginning of Queen Anne's reign (1702), six regiments of maritime soldiers were raised; and among the regulations concerning their service it is stated that they were to be quartered, when on shore, near the principal seaports. Whether at sea or on shore, they were to be paid at the same rate as the land forces, and the same deductions were to be made for clothing. At sea they were to be allowed provisions equal in every respect to the shares of the seamen, without suffering any diminution of pay on that account.

In 1749, the then existing regiments of marine soldiers, ten in number, were disbanded; and six years afterwards, on the recommendation of Lord Anson, there were raised 130 companies, consisting in all of above 5000 men, who were put under the immediate command of the lords of the Admiralty, and whose head-quarters were appointed to be at Plymouth, Portsmouth, and Chatham. The corps of marines, as it was then called, has subsequently been considerably increased; in 1759 it numbered 18,000 men; and during the late war its strength amounted to about 20,000 men. An additional division was, by an order of council in 1805, established at Woolwich; and there are two companies of marine artillery, whose head-quarters are at Portsmouth.

The marines are now clothed and armed in the same manner as the infantry of the line, and, like all the other royal regiments, their scarlet uniform has blue facings. In an engagement at sea, they annoy the enemy by a fire of musketry from the tops and deck; and they repel with the bayonet any attempt to board the ship. The gallant *jollies*, as the marines are familiarly called, have often distinguished themselves when acting on shore; and their meritorious services at the taking of Belleisle (1761), in the battle of Bunker's Hill (1775), in the defence of Acre (1709), and in 1837, under Lord John Hay, on the coast of Spain, have earned for themselves a lasting reputation.

The royal corps is commanded by a lieutenant and a major-general, who are naval officers holding, in addition to their rank as such, those military titles. There are also four colonels-commandant of divisions, besides four colonels and second commandants. No commissions in the corps are obtained by purchase; and the officers of marines rise in it by seniority, as high only however as the rank of colonels-commandant.

MARITIME LAW. [ADMIRALTY COURTS; SHIPS; INTERNATIONAL LAW.]

MARKET, in law Latin *mercatum*, a public place and fixed time for the meeting of buyers and sellers. A legal market can exist only by virtue of a charter from the crown or by immemorial usage, from which it will be presumed that a royal charter once existed, although it can be no longer produced. A market is usually granted to the owner of the soil in which it is appointed to be held, who, as such grantee, becomes the owner, or lord, of the market. In upland towns, that is, towns which, not being walled, had not attained the dignity of boroughs, markets were frequently granted to lords of manors; but in walled towns or boroughs, particularly in such as were incorporated, the ownership of the soil having usually, by grant from the crown, or other lords of whom the borough was originally holden, been vested in the incorporated burgesses, the practice has commonly been to grant markets to the municipal body.

The prerogative of conferring a right to hold a market is however subject to this limitation, that the grant must not be prejudicial to others, more especially to the owners of existing markets. In order that the crown may not be surprised into the making of an improper grant, the first step is to issue a writ Ad quod damnum, under which the sheriff of the county is to summon a jury before him to inquire whether the proposed grant will be to the damage of the king or of any of his subjects. This writ must be executed in a fair and open manner, and the sheriff is bound to receive evidence tendered against, as well as in favour of, the grant. But as the writ does not purport to affect the interest of any person in particular, it is not necessary that notice should be given of the time or place at which it is meant to be executed. Notwithstanding a finding by the jury that the proposed market will not be injurious, any party who conceives that his interests are affected by the grant when made, whether he appeared upon the inquiry under the writ Ad quod damnum or not, may traverse the finding, or sue out a writ of Scire facias, which, after reciting the alleged injury, calls upon the grantee, in the name of the crown, to show cause why the grant should not be cancelled. If a new market be set up without any grant from the crown, the party is liable to be called upon by the crown by the writ of Quo warranto, to show by what warrant he exercises such a franchise

[LIBERTY]; and he is also liable to an action on the case for damages, at the suit of any person to whose market, or to whose property, the market so set up by the defendant is a nuisance. A new market is presumed to be injurious to another held within the distance of twenty miles, even though it be on a different day; but this presumption may be rebutted.

Formerly markets were held chiefly on Sundays and holidays, for the convenience of dealers and customers, who were brought together for the purpose of hearing divine service. But in 1285, by 13 Edward I. c. 5, fairs and markets were forbidden to be held in churchyards; and in 1448, by 27 Henry VI. c. 5, all showing of goods and merchandise, except necessary victuals, in fairs and markets, was to cease on the great festivals of the church, and on all Sundays except the four Sundays in harvest. The holding of fairs and markets for any purpose on any Sunday was prohibited in 1677, by 29 Charles II. c. 7.

The grantee of a market has a court of record called a court of pie-powder (pieds pouldreux, 'dusty feet'), for the prompt decision of matters arising in the market. Such a court being considered necessary for the expedition of justice and for the support of the market, the power for holding it is incident to a grant of a market, even though the royal letters patent by which the grant is made be entirely silent on the subject.

Sales in markets may be of goods actually brought within the precincts of the market, or of goods not so brought. Goods not within the precincts of the market are sold sometimes by sample, sometimes without sample. Where goods are usually brought into the market for sale, it is incumbent on the lord of the market to take care that every thing be sold by correct and legal weights and measures.

For the security of dealings in markets, contracts were formerly required to be made in the presence of an officer appointed for that purpose by the lord of the market, for which service he received from the buyer a small remuneration called market-toll.

It is a rule of the common law that every sale in market-overt (open market) transfers to the buyer a complete property in the thing sold; so that however defective the title of the vendor may be, that acquired by the vendee is perfect, even where the property belongs to a person who is under legal disability, as an infant, a married woman, an idiot, or a person in prison or beyond sea. In the city of London every shop is market-overt for goods usually sold there.

But this rule is subject to certain exceptions. A sale in market-overt does not affect the rights of the crown: nor does it affect the rights of others, unless the sale be in an open place, as a shop, and not a warehouse or other private part of the house, so that those who go along cannot see what is doing; it must not be in a shop with the shop-door or windows shut, so that the goods cannot be seen. The articles bought must be such as the party usually deals in. The sale must be without fraud on the part of the buyer, and without any knowledge on his part of any want of title in the vendor. If the seller acquire the goods again, the effect of the sale in barring the true owner is defeated. There is no transfer of property if the goods are given or pawned; and if sold to the real owner it is not a contract of sale. The sale must be between sunrise and sunset, and must be commenced and completed in the market.

By 21 Henry VIII. c. 2, 'If any felon rob or take away money, goods, or chattels, and be indicted and found guilty, or otherwise attainted upon evidence given by the owner or party robbed, or by any other by their procurement, the owner or party robbed shall be restored to his money, goods, or chattels.' Since this statute, stolen goods, specified in the indictment, have, upon the conviction of the offender, been restored to the prosecutor, notwithstanding any sale in market-overt.

As stolen horses can easily be conveyed to distant markets, the legislature has frequently attempted to protect the owner against the consequences of a sale in market-overt. By 2 and 3 Philip and Mary, c. 7, 'No sale of a horse stolen binds the

property, unless it stand or be ridden an hour together between ten o'clock and sunset, in an open part of the market, and all parties to the bargain come with the horse to the book-keeper and enter the colour, and one mark, at the least, of the horse sold, and pay the toll, if any due, or else a penny.' The 31 Elizabeth, c. 12, contains numerous provisions on this matter.

By 1 James I. c. 21, 'No sale, exchange, pawn, or mortgage, of any jewels, plate, apparel, household stuff, or other goods, wrongfully purloined, taken, robbed, or stolen, and sold, uttered, delivered, exchanged, pawned, or done away, within London and its liberties, or Westminster, or Southwark, or within two miles of London, to any broker or pawn-taker, shall work or make any change or alteration of the property or interest.'

A market is generally appointed to be held once, twice, or three times in a week, for the current supply of commodities, mostly of provisions. A large market held once or twice a year is called a fair; and, according to Lord Coke, a large fair held once a year is a mart.

Fairs have all the legal incidents of markets, and are subjected to further regulations by 2 Edward III. c. 15, one of which requires, that at the opening of the fair, proclamation be made of the time that it is to continue.

MARQUE, LETTERS OF. [PRIVATEER.]

MARQUIS, a title of honour in England. Persons who have this title are the second in the five orders of English nobility: dukes are the first. The younger sons of marquises are addressed as "my lord," as Lord Henry Petty, Lord John Thynne.

All titles of honour seem to have been originally derived from offices. The term marquis designated originally persons who had the care of the marches of a country. The word "marches" is the plural of "mark," which in its political sense signfies "boundaries." The "marches" in England, in the earlier period of our history, were the lands on the borders of England and Scotland, and England and Wales. In Germany the corresponding term to marquis is *markgraf* (margrave), which is "lord of the marches," or according to the German form, of the "mark."

There were no English marquises before the reign of Richard II. In the reign of Edward III. a foreign marquis, the marquis of Juliers, was made an English peer with the title of earl of Cambridge, and this circumstance probably suggested to King Richard the introduction of this new order of nobility. The person on whom it was conferred was his great favourite Robert de Vere, earl of Oxford, who was created duke of Ireland and marquis of Dublin in 1385. But three years after he was attainted and his honours forfeited.

In 1397 one of the illegitimate sons of John of Gaunt was created marquis of Dorset, but he was soon deprived of the title, and his son had only the earldom of Somerset. The title of marquis of Dorset was however revived in the same family in 1443, when also William de la Pole was made marquis of Suffolk.

In 1470 John Nevil, earl of Northumberland, brother to Richard Nevil, earl of Warwick, the king-maker, was made marquis Montacute, but he was soon after slain at the battle of Barnet, and the title became lost.

In 1475 Thomas Grey, earl of Huntingdon, son to the queen of King Edward IV., by her former husband, was made marquis of Dorset; and in 1489 Maurice Berkeley, earl of Nottingham, was made marquis of Berkeley. Henry VIII. made Henry Courtenay, earl of Devonshire, marquis of Exeter; and he made Anne Boleyn, a little before his marriage with her, marchioness of Pembroke. William Parr, earl of Essex, brother of Queen Catherine Parr, was created marquis of Northampton by King Edward IV.; and William Powlett, earl of Wiltshire, marquis of Winchester.

All these titles had become extinct in 1571, except that of marquis of Winchester. This title still continues in the male representative of the original grantee, though for a century or more it was little heard of, being lost in the superior title of duke of Bolton.

Queen Elizabeth made no new marquis, nor did King James I. till the fifteenth

year of his reign, when his great favourite, George Villiers, was created marquis of Buckingham. Charles I. advanced the earls of Hertford, Worcester, and Newcastle to be marquises of those places; and Henry Pierrepoint, earl of Kingston, was made marquis of Dorchester.

Charles II. advanced the earl of Halifax to be marquis of Halifax in 1682, and James II. made the earl of Powis marquis of Powis in 1687.

A new practice in relation to this title was introduced at the Revolution. This was the granting of the title of marquis as a second title when a dukedom was conferred. Thus when Schomberg was made duke of Schomberg he was made also marquis of Harwich; when the earl of Shrewsbury was made duke of Shrewsbury he was also made marquis of Alton; and when the earl of Bedford was made duke of Bedford he was also made marquis of Tavistock. There were many other creations of this kind in the reign of William III., and several of marquisates only. Of the existing dukes ten have marquisates in the second title, which is borne by the eldest son during the life of the father.

The only marquis who sits in the House of Peers as a marquis, and whose title dates before the reign of George III., is the marquis of Winchester. The other marquises are all of recent creation, though most of them are old peers under inferior titles.

The title seems not to have been known in Scotland till 1599, when marquises of Huntley and Hamilton were created.

MARRIAGE is a contract by which a man and a woman enter into a mutual engagement, in the form prescribed by the laws of the country in which they reside, to live together as husband and wife during the remainder of their lives.

Marriage is treated as a civil contract even by those Christians who regard it as a sacrament, and as typical of the union between Christ and the church. The religious character of the transaction does not arise until there has been a complete civil contract, binding according to the laws of the country in which the marriage is contracted. The authority of the sovereign power in regulating and prohibiting marriages is therefore not affected by the superinduced religious character.

Among Protestants marriage has ceased to be regarded as a sacrament, yet in most Protestant countries the entrance into the marriage state is accompanied with religious observances. These are not, however, essential to a valid marriage any further than the sovereign power may have annexed them to, and incorporated them with, the civil contract.

After the establishment of Christianity it became usual to make the marriage-promise in the presence of the assembled people, and to obtain at the same time the blessing of the priest upon the union, except when one of the parties had been married before, in which case no nuptial benediction was antiently pronounced, by which distinction it was perhaps intended to intimate that second marriages, though tolerated, were not approved by the church. So late however as the twelfth century, in a decretal epistle of Alexander III. to the bishop of Norwich. the pope says, "We understand from your letter that a man and woman mutually accepted one another without the presence of any priest, and without the observance of those solemnities which the Anglican church is wont to observe, and that before consummation of this marriage he had contracted marriage with another woman, and consummated that marriage. We think right to answer, that if the man and the first woman accepted one another de præsenti, saying one to another, 'I accept thee as mine, and I accept thee as mine,' although the wonted solemnities were not observed, and although the first marriage was not consummated, yet the woman ought to be restored to her husband; since after such consent he neither should nor could marry another."

Private marriages, designated *clandestine* marriages by the clergy, continued to be valid till the Council of Trent, which, after anathematizing those who should say that private marriages theretofore contracted by the sole consent of the parties were void, decreed, contrary to the opinion of 56 prelates, that thence-

forward all marriages not contracted in the presence of a priest and two or three witnesses should be void. This decree, being considered as a usurpation upon the sovereign power, which alone can prescribe whether any and what formalities shall be required to be added to the consent of the parties in order to constitute a valid marriage, has never been received in France and some other Catholic countries.

A marriage was clandestine if contracted otherwise than in public, that is, in face of the church; and it was called an *irregular* marriage if it was clandestine, or if, though not clandestine, it was contracted without the benediction of a priest in the form prescribed by the rubric, the intervention of a priest having latterly been required in all cases, even though one of the parties were a widower or a widow. Clandestinity and irregularity subjected the parties to ecclesiastical censures, but did not affect the validity of the marriage.

The decrees of the Council of Trent had no force in England. A marriage by mere consent of parties, until the passing of the Marriage Act in 1753, constituted a binding engagement; though if application were made to the ecclesiastical courts for letters of administration, &c., under a title derived through such irregular marriage, those courts sometimes showed their resentment of the irregularity by refusing their assistance, more especially where the non-compliance with the usual formalities could be traced to disaffection to the Established Church. What the formalities required by the Church before the Marriage Acts were, it is now immaterial to consider. Such of them as are not incorporated into any of the Marriage Acts are now of no force for any purpose.

To constitute a valid marriage, as well before as since the Marriage Acts, it is necessary, 1st, that there should be two persons capable of standing in the relation of husband and wife to each other; 2ndly, that they should be willing to stand in that relation; and 3rdly, that they should have contracted with one another to stand in that relation.

1. The capacity of standing in the relation of husband and wife implies that at the time of the contract there should be no natural or legal disability. Total and permanent disability on either side to consummate marriage will render the contract void. Temporary disability from disease does not affect the validity of a marriage. Temporary disability from defect of age does not invalidate the marriage, but it leaves the party or parties at liberty to avoid or to confirm such premature union on attaining the age of consent, which for males is 14, and for females 12. Before the abolition of feudal tenures, when the lords were entitled to sell the marriages of their male and female wards, infantine marriages were very common, fathers being anxious to prevent wives and husbands from being forced upon their children after their death, and lords being eager either to secure the prize for their own family, or to realise the profit resulting from a sale. A person who is already married is under a legal disability to contract a second marriage whilst the first wife or husband is alive; and although there may have been the strongest grounds for believing that the first wife or husband was dead, the children of the second marriage would not in England derive any benefit from the absence of moral guilt in their parents, though in France and some other countries the issue of marriages so contracted, bonâ fide, are treated with greater indulgence.

Consanguinity within certain degrees, and affinity also, is a legal impediment to marriage. The degree of nearness which shall disable parties from uniting in marriage varies in different countries, and has varied at different periods in our own. [AFFINITY.]

The impediment to marriage arising out of consanguinity applies in the same degree to illegitimate as to legitimate consanguinity, and the impediment resulting from affinity is created by illicit connexion as well as by marriage. The Council of Trent restricted the impediment of affinity arising out of illicit connexion to the second degree.

2. Each party must have the will to contract marriage with the other. An idiot therefore, who cannot understand

the nature of the conjugal relation, is incapable of contracting marriage; and also a lunatic, except during a lucid interval. But however absurd it may appear, children are presumed to have sufficient intelligence to understand the nature of the marriage engagement at seven; and though the contract is not absolutely binding upon them until they reach the age of consent, still the marriage of a child above the age of seven would prevent its forming a second marriage until the age of consent, as until that age it cannot dissent from the first marriage.

3. There must be an actual contract of marriage. This, at common law, might be by words of present contract, which would, without more, constitute a perfect marriage,—or by words of future contract, followed by cohabitation.

The unlimited freedom of marriage was first limited in England by the Marriage Act of 1753 (26 Geo. II. c. 33), the principal provisions of which form the basis of the present law. Many of these provisions are taken from the canon law, an observance of which was, before this statute, necessary to constitute a *regular* marriage, though a marriage contracted without them was *valid*.

The restrictions upon the common-law freedom of marriage are now embodied in two statutes.

The 4 Geo. IV. c. 76, contains the following provisions:—Banns of matrimony are to be published in the church, or a public chapel in which banns are allowed to be published, of the parish or chapelry wherein each of the parties dwells, immediately after the second lesson of morning service, or of evening service if there be no morning service, upon three Sundays preceding the solemnization (§ 2). Notice of the names of the parties, their place of abode, and the time during which they have dwelt there, is to be delivered to the minister seven days before the first publication (§ 7). Banns are to be republished on three Sundays, if marriage do not take place within three months after publication is completed (§ 9). No licence of marriage (that is, dispensation from the obligation to publish banns) is to be granted to solemnize marriage in any church or chapel not belonging to the parish or chapelry within which the usual place of abode of one of the parties has been for fifteen days immediately before the granting of the licence (§ 10). Extra-parochial places are to be taken to belong to the parish or chapelry next adjoining (§ 12). Upon obtaining a licence, one of the parties must swear that he or she believes that there is no impediment of kindred or alliance (consanguinity or affinity), or of any other lawful cause, nor any suit commenced in any ecclesiastical court, to hinder the marriage, and that one of the parties has, for fifteen days immediately preceding, had his or her usual place of abode within the parish or chapelry; and where either of the parties, not being a widower or widow, is under the age of twenty-one, that the consent of the person or persons whose consent is required by that act has been obtained, or that there is no person having authority to give such consent (§ 14). The father, if living, of any party under twenty-one, not being a widower or widow, or, if the father be dead, the guardian or guardians of the person of such party, or one of them, and in case there be no guardian, then the mother of such party if unmarried, and if there be no mother unmarried, then the guardian or one of the guardians of the person appointed by the Court of Chancery, has authority to give consent to the marriage of such party; and such consent is required, unless there be no person authorised to give it (§ 16). In case of the father, guardian, or mother being *non compos mentis*, or beyond sea, or unreasonably or from undue motives refusing or withholding consent, any person desirous of marrying may petition the lord-chancellor, master of the rolls, or vice-chancellor; and in case the marriage proposed shall, on examination, appear to be proper, the lord-chancellor, &c. may judicially declare the same to be so; and such declaration shall be equivalent to consent of the father, &c. (§ 17.) If a marriage be not had within three months after licence, marriage cannot be solemnized without a new licence or banns (§ 19). The archbishop of Canterbury is authorized to grant special licences to marry at any convenient time

or place (§ 20). If any persons knowingly and wilfully intermarry in any other place than a church or such public chapel, unless by special licence, or, knowingly and wilfully, intermarry without the publication of banns and licence, or, knowingly and wilfully, consent to the solemnization of such marriage by a person not being in holy orders, the marriage is null and void (§ 22). (It has been held, that in order to invalidate a marriage under this section, both parties must know the irregularity of the proceeding.) When a marriage is solemnized between parties, both or one of them being under age, by false oath or fraud, the marriage is valid, but the guilty party is to forfeit all property accruing from the marriage (§ 23). After the solemnization of any marriage by banns or licence, no proof can be required of actual dwelling or usual place of abode, nor can any evidence be received to prove the contrary (§ 26). Marriages are to be solemnized in the presence of two witnesses besides the minister, and registered.

The principal provisions of 6 & 7 Wm. IV. c. 85, which was passed chiefly in favour of those who scrupled at joining in the services of the Established Church, are these:—Marriages may be solemnized on production of the registrar's certificate, under the provisions of that act, in like manner as after publication of banns (§ 1). In every case of marriage intended to be solemnized according to the rites of the Church of England, unless by licence or special licence, or after publication of banns, and in every case of marriage intended to be solemnized according to the usages of the Quakers or Jews, or according to any form authorized by that act, one of the parties is to give notice, according to the form set out in the act, to the superintendent registrar of the district or each of the districts within which the parties have dwelt for seven days then next preceding, stating the name and surname, and the profession or condition, and the dwelling-place of each, and the time (not less than seven days) during which each has dwelt therein, and the church or building in which the marriage is to be solemnized (§ 4).

After the expiration of seven days, if the marriage is to be solemnized by licence (that is, from the surrogate, or officer of the ecclesiastical court), or of twenty-one days, if without licence, the superintendent registrar, upon request, is to issue a certificate, provided no lawful impediment be shown, stating the particulars set forth in the notice, the day on which it was entered, that the full period of seven days or of twenty-one days has elapsed since the entry of such notice, and that the issue of such certificate has not been forbidden by any authorized person (§ 7). (This provision does not apply to marriages by licence celebrated according to the rites of the Church of England.) The like consent is required to a marriage solemnized by licence, as would have been required to marriages by licence before the passing of the act (that is, by 4 Geo. IV. c. 76, §§ 16, 17), and every person whose consent to a marriage by licence is required by law is authorized to forbid the issue of the superintendent registrar's certificate (§ 10). Every superintendent registrar may grant licences for marriage in any building registered within any district under his superintendence, or in his office (§ 11). Before any licence for marriage can be granted by a superintendent registrar, one of the parties must appear personally before him, and must, in case the notice of the intended marriage has not been given to the same superintendent registrar, deliver to him the certificate of the superintendent registrar or registrars to whom such notice has been given; and such parties must make oath, affirmation, or declaration that he or she believes that there is not any impediment of kindred or alliance, or other lawful hindrance to the marriage, and that one of the parties has for fifteen days immediately before the day of the grant of the licence (or rather the day of the making of the oath, &c.), had his or her usual place of abode within the district in which such marriage is to be solemnized; and where either party, not being a widower or widow, is under twenty-one, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there

is no person having authority to give such consent (§ 12). No marriage after notice, unless by virtue of a licence by the superintendent registrar, is to be solemnized or registered until after the expiration of twenty-one days after entry of notice, and no marriage is to be solemnized by the licence of any superintendent registrar, or registered, until after the expiration of seven days after the day of the entry of notice (§ 14). Whenever a marriage is not had within three calendar months after notice entered by the superintendent registrar, the notice and certificate, and any licence granted thereupon, and all other proceedings, become utterly void; and no person can proceed to solemnize the marriage, nor can any registrar register the same, until new notice, entry, and certificate (§ 15). The certificate of the superintendent or superintendents is to be delivered to the officiating minister, if the marriage is to be solemnized according to the rites of the Church of England; and such certificate or licence is to be delivered to the registering officer of Quakers for the place where the marriage is solemnized, if the same shall be solemnized according to their usages; or to the officer of a synagogue by whom the marriage is registered, if to be solemnized according to the usages of persons professing the Jewish religion; and in all other cases it is to be delivered to the registrar present at the marriage (§ 16).

Any proprietor or trustee of a separate building certified according to law as a place of religious worship may apply to the superintendent registrar, in order that such building may be registered for solemnizing marriages therein; and in such cases he is to deliver to the superintendent registrar a certificate signed in duplicate by twenty householders, that such building has been used by them during one year as their usual place of public religious worship, and that they are desirous that the place shall be registered; each of which certificates is to be countersigned by the proprietor or trustee by whom the same is to be delivered, and the superintendent registrar is to send both certificates to the registrar-general, who is to register such building accordingly, and indorse on both certificates the date of the registry, and to keep one certificate with the other records of the general register office, and to return the other certificate to the superintendent registrar, who is to keep the same with the other records of his office; and the superintendent registrar is to enter the date of the registry of such building, and is to give a certificate of such registry under his hand, on parchment or vellum, to the proprietor or trustee by whom the certificates are countersigned, and is to give public notice of the registry thereof, by advertisement in some newspaper circulating within the county and in the 'London Gazette' (§ 18).

After the expiration of the twenty-one days, or of seven days, if the marriage is by licence (that is, from the surrogate), it may be solemnized in the registered building stated in the notice, between and by the parties described in the notice and certificate according to such form and ceremony as they may see fit to adopt: every such marriage to be solemnized with open doors between eight and twelve in the forenoon, in the presence of some registrar of the district in which the building is situate, and of two witnesses.

In some part of the ceremony, and in the presence of registrar and witnesses, each of the parties is to declare—

> "I do solemnly declare, that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D."

And each of the parties is to say to the other—

> "I call upon these persons here present, to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband)."

Provided also, that there be no lawful impediment to the marriage of such parties (§ 20).

Persons who object to marry in a registered place of worship may, after due notice and certificate issued, contract and solemnize marriage at the office of the superintendent registrar, and in his presence and in that of some registrar of the district, and of two witnesses, with

open doors, and between the hours aforesaid, making the declaration and using the form of words as above (§ 21). After any marriage solemnized, it is not necessary, in support of such marriage, to give proof of the actual dwelling of either of the parties previous to the marriage within the district for the time required by the act, or of the consent of any person whose consent is required; nor is evidence admissible to prove the contrary in any suit touching the validity of such marriage (§ 25). The registrar before whom any marriage is solemnized according to the provisions of this act may ask of the parties to be married the several particulars required to be registered touching such marriage (§ 36). Every person knowingly and wilfully making any false declaration, or signing any false notice or certificate required by this act, for the purpose of procuring any marriage, and every person forbidding the issue of any superintendent registrar's certificate by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, is to suffer the penalties of perjury (§ 38). If any person knowingly and wilfully intermarry under the provisions of this act, —in any place other than the church, chapel, registered building, or office, or place specified in the notice and certificate,—or without due notice to the superintendent registrar,—or without certificate of notice duly issued,—or without licence, in case a licence is necessary,—or in the absence of a registrar, where the presence of a registrar or superintendent registrar is necessary, the marriage of such persons, except in certain excepted cases, is null and void (§ 42); as under 4 Geo. IV. c. 76, § 22, a marriage would not be void unless *both* parties knowingly and wilfully concurred in marrying contrary to the provisions of the 42nd section. If any valid marriage be had under the provisions of this act by means of any wilfully false notice, certificate, or declaration made by either party to such marriage, as to any matters to which a notice, certificate, or declaration is required, the attorney-general or solicitor-general may sue for a forfeiture of all estate and interest in any property accruing to the offending party by such marriage (§ 43). Consent to marriage may be withdrawn upon good reason; but it would rather appear that this cannot be done merely because the parent or guardian has changed his mind. The question of consent is not however of such vital importance as under the first Marriage Act (26 Geo. II. c. 33, § 11), which made marriages without consent of parents, &c. absolutely void. Under 4 Geo. IV. c. 76, § 23, and 6 & 7 Wm. IV. c. 85, § 43, a false statement as to consent subjects the fraudulent party to the penalties of perjury, and to a forfeiture of all estate and interest in any properties accruing by the marriage, but leaves the marriage itself in full force.

These statutes do not extend to marriages contracted out of England, or to marriages of the royal family, which are regulated by a particular statute, 12 Geo. III. c. 11.

In August, 1844, an act was passed (7 & 8 Vict. c. 81) relating to marriages in Ireland, and for registering such marriages, which came into operation April 1st, 1845. It establishes a system very nearly similar to that which exists in England and Wales under 6 & 7 Wm. IV. c. 85.

Before 1835 marriages within the prohibited degrees of consanguinity and affinity were valid until annulled by a declaratory sentence of the ecclesiastical court, after which they became void from the beginning, and the issue of such marriages were, by such sentence, rendered illegitimate; and the law is still so with respect to personal incapacity existing at the time of the contract. But as the ecclesiastical court could only proceed for the benefit of the souls of the parties, and its authority to annul an incestuous marriage was founded upon the duty of putting a stop to the incestuous intercourse, the power of annulling the marriage ceased upon the death of either of the parties. The validity of such marriage, and the legitimacy of the issue, depended therefore upon the contingency of a suit being instituted and a sentence pronounced during the joint lives of the husband and wife. But now, by 5 & 6

Wm. IV. c. 54, all marriages thereafter celebrated between persons within the prohibited degrees of consanguinity or affinity are absolutely void. [AFFINITY.] A marriage contracted while there is a former wife or husband alive is void, without any declaratory sentence. [BIGAMY.]

Generally speaking, a marriage, valid according to the law of the country in which it was contracted, is valid in every other country. This is the general rule of law among European nations and nations of European origin. [INTERNATIONAL LAW.]

As to the legitimation by marriage of children born before a marriage, see BASTARD.

Marriage Statistics.—The number of marriages registered in England and Wales in the four years from 1839 to 1842 inclusive was as under:—

1839	123,166
1840	122,665
1841	122.496
1842	118,825

In 1841 and 1842 the number of marriages celebrated according to the rites of the Established Church were:—

	1841.	1842.
By special licence	13	9
Licence	15,792	14,935
Banns	78,015	75,744
By registrar's certificates	972	944
Form not stated	19,579	18,415
Total	114,371	110,047

Other marriages not celebrated according to the forms of the Established Church:—

	1841.	1842.
In registered places of worship	5882	6200
In registrar's offices	2064	2357
Between Jews	66	58
Between Quakers	113	163
	8125	8778

In each of the four years from 30th June, 1837, to July 1st, 1841, the marriages celebrated in registered places of worship and in registrar's offices were as under:—

	In Registered Places of Worship.	In Registrar's Offices.
1837-38	2976	1093
1838-39	4654	1564
1839-40	5140	1938
1840-41	5816	2036

The proportion of marriages at registered places of worship and at the registrars' offices has slowly increased, and in 1842 the number of marriages so performed represented a population of about 1,160,000. The number of buildings registered in England and Wales for the solemnization of marriages was 2232 on the 30th June, 1844. They belonged to the following denominations:—

Presbyterians	186
Independents or Congregationalists	903
Baptists	539
Methodists (Arminian)	204
Methodists (Calvinistic)	69
Roman Catholics	284
Foreign churches	5
Miscellaneous	42

Out of the total number 215 registered buildings were in Lancashire, 202 in Yorkshire, 128 in Middlesex, and 86 in Devonshire.

From 1839 to 1842 inclusive the mean number of marriages was 1 in 130 of the total population, or 1 in 64 of the male, and 1 in 66 of the female population. In 1839 the proportion of marriages was 1 in 126, and in 1842 only 1 in 136. This decrease was caused by the severe depression of trade in 1842. Dividing England and Wales into eleven great districts, the proportion of marriages varied in the four years 1839-42 from 1 in 102 in the metropolis to 1 in 149 in the south-eastern counties; but in all England out of 100,000 persons 30,615 only were of the ages of from 20 to 40, while in the metropolis the numbers of this age were 36,480. Thus the annual marriages were to the persons aged 20-40 nearly as 1 to 40 in all England, and 1 to 37 in the metropolis. The number of females in England and Wales aged from 15 to 45 was 3,811,654 in 1841, and the proportion married was estimated by the registrar-general (*Sixth Report*, p. xxxiv.) at 45.48 per cent., or

1,733,576, leaving 2,078,078, who were widows and spinsters. Of the married women, nearly 1 in 4 gave birth to a child in that year; and of the unmarried women, nearly 1 in 59 gave birth to an illegitimate child.

In 1842 eleven per cent. or 1 in 9·07 of the persons married had been married before, namely, 15,619 widowers and 10,579 widows (total 26,198). The total number of persons married in 1842, who were under age (21) was 5387 men and 16,003 women, or 4·53 and 13·47 per cent. respectively of the total numbers married, or a mean of 9 per cent. In 1841 the proportion was 8·83 per cent. In Worcestershire the proportion of women who were under 21 at the time of marriage was 15·63 per cent., and in Berkshire, Cheshire, Rutlandshire, Lancashire, and Norfolk from 14·20 to 14·75. In Devonshire the proportion was lowest (7 43 per cent.); and in Wales, Shropshire, Hereford, and Westmoreland it varied from 8·09 to 9·07 per cent. In Cheshire, Worcestershire, Rutlandshire, and Dorsetshire the proportion of men who were under 21 at the time of marriage varied from 6·01 to 6·52 per cent.; and in Devonshire it was as low as 2·08 per cent. In 1844 33 in 100 men and 49 in 100 women married signed the marriage register with marks; but in Monmouthshire 51 men and in North Wales 71 women signed with marks, while in Cumberland the proportion was 16 men and 36 women in 100.

The proportion of marriages to the total population in several of the principal countries of Europe is as follows:—

Austria . .	1 in 124
France . .	1 in 121
Prussia . .	1 in 113
Russia . .	1 in 99

In England on an average of four years the proportion was 1 in 130. The returns for Austria, France, and Prussia are the average of three years, and the return for Russia is for 1842 only.

The number of births (in wedlock) to a marriage is about 3·33 in France; 4·05 in Prussia; 4·34 in Austria; and 4·26 in England; but if a correction be made for first marriages (*Sixth Report of Registrar General*, p. xxx.), the proportion for England is 4 79 to every two persons married. (*Reports of Registrar General, First to Sixth*).

MARRIAGE in Scotland is a mere consensual contract, which admits of being proved like any other contract. Marriages are, however, distinguished into regular and clandestine. For the former a certificate that the banns have been three times proclaimed in the parish church of both parties is necessary. All marriages deficient in this respect are called clandestine. The *celebration* of a clandestine marriage subjects all the parties to penalties; but if there be no celebration but a mere attestation by a justice of peace or any other person not a clergyman, that parties have declared each other in his presence man and wife: this, if supported by other circumstances, is evidence of the contract. Clandestine marriages are nearly unknown among the respectable inhabitants of Scotland. By the 4 & 5 Wm. IV. c. 28, regular marriages may be solemnized by the clergy of any religious persuasion—the privilege was previously confined to the established and licensed episcopalian clergy. A doctrine has for some time existed, which has received some support from Lord Stowell's judgment in Dalrymple's case (2 Haggard 54), that in Scotland merely living as man and wife constitutes marriage. The very wide nature of the doctrines laid down in that case astonished some of the Scottish lawyers, and it may be questioned whether they will be all confirmed. A *promise* of marriage, proved by writing or the oath of the promiser, if followed by connection, undoubtedly constitutes marriage in Scotland.

MARRIAGE, ROMAN. The right conception of a Roman marriage and of its legal consequences is essential to enable us to approximate to a right understanding of the old Roman polity. It is also an important element in the history of the condition of women in civilized Europe.

Children were in the power of their father only when they were the offspring of a legal marriage (justæ nuptiæ), or were adopted in due form. [ADOPTION.] To constitute such a legal marriage there must be between the parties *connubium*

the nature of which condition is best explained by an example:—Between a Roman citizen and the daughter of a Roman citizen there was *connubium*, and as a consequence the children of such marriage were Roman citizens, and in the power of their father. Between a Roman citizen and a female slave (ancilla) there was no *connubium*, and consequently the children which sprung from such a union were not Roman citizens. Whenever there was no *connubium*, the children followed the condition of the mother: when there was *connubium*, they followed the condition of the father. Various degrees of consanguinity, as the relation of parent and child, prevented *connubium* between parties in such a relation. After the Emperor Claudius had married Agrippina, his brother's daughter, such relationship was no longer an impediment to a legal marriage; but the licence was carried no further than the terms of the decretum of the senate warranted, and the marriage of an uncle with his sister's daughter remained, as before, an illegal union. (Tacit., *Annal.*, xii. 7; Gaius, i. 62.) Further, to constitute a legal marriage, the two parties must be of sufficient bodily maturity; both parties also must consent, if they are capable of giving a legal consent (sui juris); or if not, their parents must consent.

Connubium then is the capacity to contract a Roman marriage. No particular ceremony was necessary for marriage; legal capacity, consent, and cohabitation were sufficient. But in order that the wife might become a member of the husband's family, there must be either Usus, Confarreatio, or Coemptio.

A woman who lived for one year with a man without interruption as his wife, came by virtue of this cohabitation (usus) into his hand (in manum). As in the case of all movables, by the laws of the Twelve Tables, one year's enjoyment of a thing transferred the ownership of it, so by one year's uninterrupted cohabitation the husband acquired this interest in the wife. The Twelve Tables provided that if the wife wished to avoid the legal effect of this cohabitation, it was only necessary to absent herself from her husband for three nights during the year, which would be a sufficient legal interruption to the usus. In the time of Gaius this part of the old law had been partly abolished by enactments, and had partly fallen into disuse.

The Confarreatio, so called from the use of a loaf of bread on the occasion, appears to have been of the nature of a religious ceremony, and it existed in the time of Gaius. It appears that certain offices, such as that of Flamen Dialis, could be held only by those who were born of parents who had been married by the ceremony of Confarreatio. (Gaius, i. 112; Tacit., *Ann.*, iv. 16.) The form of divorce that applied to a marriage by Confarreation was called Diffareation (diffareatio).

The Coemptio was, in form, a sale (mancipatio) before five witnesses. The Coemptio might be made either between a woman and her intended husband, in which case she became, in contemplation of law, his daughter, or between a woman and a stranger (fiduciæ causa), which was a necessary legal process in case a woman wished to change one guardian for another, or to acquire the privilege of making a will. For until the Senatusconsultum passed in the time of Hadrian, no woman could make a testamentary disposition (with the exception of certain privileged persons), unless she had contracted the Coemptio, that is, had been sold, and then resold and manumitted. The Coemptio, being effected by mancipatio, worked a legal change of status (*Dig.* iv. tit. 5, s. 1), or *diminutio capitis*; and it was the least of the three kinds of *diminutio capitis*, or that by which a person underwent no change in his civil capacity except the being transferred into another family. (Paulus, *Dig.*, iv., tit. 5, s. 11) This explanation will render intelligible the passage of Cicero on the testamentary power of women (*Topic.*, 4), taken in connection with Gaius (i. 115, &c.). The essays of Hoffmann and Savigny in the 'Zeitschrift für Geschichtliche Rechtswissenschaft,' vol. iii., p. 309, &c., may also be read with advantage.

When a wife came into the hand of her husband she was properly called Mater familiae: when she did not come into the hand of her husband, she was simply

Uxor (Cicero, *Topica*, 3). The 'conventio in manum,' or coming into the hand of the husband, made the wife a part of the husband's family, and her personality, like that of the husband's children, was merged in that of her husband. It followed that if she had property, it became her husband's property. As the wife in manu was in the place of a daughter to her husband and a sister to her children, she inherited, in case of the husband's intestacy, like one of her children. (Gaius, iii. 14.) If there was no conventio in manum, the wife still belonged to her former family, and the husband had no power over her property, except that which he received as Dos, the nature of which will presently be explained. In the late Republic and under the Empire, it appears that the conventio in manum became less common, and the husband and wife (uxor) were two different persons in all matters that related to their property. The wife (uxor) was, in fact, nothing more than a person of a different sex, who bore children which were in the power of the husband. The wife was independent of her husband, who had no right over her, except the exclusive enjoyment of her person, and the wife could divorce the husband, just as the husband could divorce the wife. When there was conventio in manum, it is impossible that the wife could have divorced her husband by her own act. [DIVORCE.]

As the wife who was not in manu did not belong to her husband's family, she could neither succeed to the property of her children, nor could they succeed to her property, according to the old Civil Law. If the wife was in manu, she and her children could inherit the property of one another, by virtue of the consanguinity between them, like other Agnati. The Praetor so far modified the law in the case of children of a mother who was not in manu, as to allow the mother and children to succeed to one another as Cognati. The Senatusconsultum Tertullianum passed in the time of Hadrian, allowed the mother (uxor) to succeed to the property of her children who left no sui heredes (sons or daughters, or their descendants, in the power of the deceased) or agnati in the first degree, such as father, or brothers or sisters. The Senatusconsultum Orphitianum, in the time of Marcus Aurelius, gave the children the succession to the mother's property in preference to her agnati.

There could be no *dos* (marriage portion), unless there was a legal marriage. The term *dos* comprehended both what the wife brought to the husband on her own account, and what was given or contracted to be given by any other person, in consideration and for the purposes of the marriage. (*Dig.* xxiii. tit. 3, s. 76.) When the *dos* came from the wife's father, it was called *profecticia*, but when from any other person, *adventicia*. It was a general rule that the *dos adventicia* remained with the husband, unless there was some agreement to the contrary, in which case it was called *dos recepticia*. What came into the husband's possession, not as *dos*, was included in the term Parapherna (παράφερνα), or Paraphernalia, and did not become the property of the husband. All kinds of property could be the subject of *dos*. If they were things that could be estimated by number, weight, and measure (res fungibiles), the husband took them, subject to the liability, in case of a dissolution of the marriage, of restoring things the same in number, weight, and measure. Things given as *dos* might be valued or not valued: in case they were valued, the complete ownership of them passed to the husband, inasmuch as the valuation was in the nature of a sale, and the husband could dispose of the things as he pleased, subject only to the liability of restoring their value, in case of a dissolution of the marriage. If the things were not valued, and any loss ensued, without the fault or culpable neglect of the husband, the loss fell on the wife. In the case of things which were not fungibiles or not valued, the ownership during the marriage might be considered as in the husband, and as returning to the wife on the dissolution of the marriage. In such a case the husband could manage the wife's property as his own; he enjoyed the profits of it during the marriage, and could sell it. With some exceptions however he could not sell or dispose of the wife's immovable property

which was included in the *dos* (dotale praedium). (Gaius, ii. 63; *Instit.* ii. tit. 8.) The portion became the husband's on the solemnization of the marriage, and he had the profits of it during the marriage. In the case of divorce the portion, or a part of it, according to circumstances, was restored. In case the wife died during the subsistence of a marriage, part returned to her father, and part remained to the children of the marriage, if any; but it might, by the terms of the marriage contract, become the husband's, even if there were no children of the marriage. As to the portion of the wife, whatever might have been originally the rights of the husband over it by virtue of the marriage, it was in later times the subject of the express stipulations of the marriage settlement. The questions of law which arose on the subject of the *dos* were numerous and sometimes difficult.

A gift from husband to wife, or from wife to husband, was void (with some few exceptions). The transaction was the same as if nothing had been done. The Donatio mortis causâ, or divortii causâ, in contemplation of death, or in consideration of divorce, was a valid gift.

In enumerating the modes by which a man may acquire property *per universitatem*, Gaius mentions the case in which a woman comes *in manum viri*, and he observes that all things pass to the husband.

(*Dig.* 23, tit. 3, 'De Jure Dotium;' tit. 5, 'De Fundo dotali;' Ulpian, *Frag.* vi., 'De Dotibus;' Gaius, i. 108, &c.; Thibaut, *System des Pandekten-Rechts.*) An outline of the Roman law of Marriage and its consequences is given in Laboulaye's *Recherches sur la Condition Civile et Politique des Femmes*, Paris, 1843.)

MARSHAL (French, *maréchal*), a term which, in its origin, meant simply a groom or manager of horses. One of the principal officers of state in England is the king's marshal, which office is now held hereditarily by the Duke of Norfolk, who is said to have the office of marshal of England, and also an honour in respect of which he is earl-marshal. This office was executed in time of war in the king's army; in time of peace, in the aula regis, or king's great court. Upon the division of the aula regis the marshal appointed deputies in the new courts. In the King's Bench the marshal's deputy was called the marshal of the marshalsea of the king's court, or marshal of the King's Bench. In the Exchequer, the deputy was marshal of the Exchequer, or clerk of the marshalsea of the Exchequer. The duty of the acting marshal is regularly to attend the court, and to take into his custody all persons committed to his custody by the court.

The lord high constable, when there was one, and the earl-marshal, were the judges before whom the court of chivalry or court martial was held. This court had cognizance of contracts touching deeds of arms and of war arising out of the realm, and of all appeals of offences committed out of the realm, and of matters within the realm relating to war, in cases where the courts of common law were incompetent to decide. The proceedings were according to the course of the Roman law. The earl-marshal cannot hold this court alone, and there has been no hereditary or permanent high constable since the forfeiture of the Duke of Buckingham, "poor Edward Bohun," in the time of Henry VIII. In the few cases in which the court of chivalry has been since held, a high constable has been appointed for the occasion. In the case of an appeal of death brought in 1583 against Sir Francis Drake by the heir of one Dowtie, whose head Drake had struck off in parts beyond sea, Queen Elizabeth refused to appoint a high constable; and thus, says Lord Coke, the appeal slept. The minor duties of the earl-marshal are set out with great minuteness of details in a document preserved in Spelman's 'Glossary.'

Besides the earl-marshal, there is a knight-marshal, or marshal of the king's household. The office of earl-marshal, and that of marshal of the King's Bench, as well as that of the knight-marshal, is called a marshalsea; but the term is ordinarily applied to the last only.

MARSHALSEA. In the marshalsea of the king's household there are two courts of record:—1. The original court

of the marshalsea is a court of record, to hear and determine causes between the servants of the king's household and others within the verge, that is, within a circle of twelve miles round the king's palace, with a jurisdiction of pleas of trespass where either party is one of the king's servants. 2. The palace court was erected by letters patent, 6 Charles I., confirmed by Charles II., and has authority to try all personal actions between party and party, though neither of them be of the king's household, provided they arise within twelve miles round Whitehall. The judges of this court are the steward of the king's household and knight-marshal; but the court is, in fact, held before a barrister deputed by the knight-marshal. The palace court is held once a week in Scotland Yard, and causes are here brought to trial in four or five court-days, unless they are of sufficient magnitude or importance to induce either party to remove it into one of the superior courts. A writ of error lies from both courts into the court of King's Bench.

MARTIAL LAW is a series of regulations made to preserve order and discipline in the army, and enforced by the prompt decisions of courts-martial: this is generally however called military law. During the existence of a rebellion, when, in consequence of the ordinary processes of general law becoming ineffectual for the security of life and property in any province or state, the legislature has appointed that a military force shall be employed to suppress the disorders and secure the offenders; and when the trial of the latter takes place according to the practice of military courts, that province or state is said to be subject to martial law.

On the occurrence of such an event in any part of the British dominions, the two houses of parliament, jointly with the crown, determine that a temporary suspension of the Habeas Corpus Act shall take place. This measure is, of course, adopted only in cases of great emergency, on account of the abuses to which it may give rise; and the necessity of it and the time of its duration are always stated in the provisions of the decree. The act by which martial law was declared in Ireland during the Rebellion in 1798 may be seen in Tytler's *Essay on Military Law*, Appendix, No. 6.

In merely local tumults the military commander is called upon to act with his troops only when the civil authorities have failed in preserving peace; and the responsibility of employing soldiers on such occasions falls entirely upon the magistrate. The military officer must then effect by force what by other means could not be effected; and, for the consequences, the officer can be answerable only to a military court or to the parliament of the nation.

The constitution of this country permits a military law for the government of the army, even in times of internal tranquillity. to co-exist with the general law of the land. But the former applies to military persons only; among these its jurisdiction comprehends all matters relating to the discipline of the army, to the cognizance of which the civil courts are not competent—as disobedience of orders, cowardice, &c.; and extends to such crimes as desertion, mutiny, and holding correspondence with the enemy. On the other hand, every citizen who is not engaged in the military profession is subject to the general laws of the land alone, and is free from all the restraints which, by the necessity of preserving discipline, are imposed on the soldier: he is his own master, he can dispose of his time at pleasure, and the peculiar regulations of the military service are, to him, as though they did not exist.

This distinction between the two classes of persons with respect to military law is clearly expressed in the 'Mutiny Act,' as it is called, which was first passed in the reign of William III. It is there stated that the subjects of this realm cannot be punished in any other manner than conformably to the common laws of the country. But an exception is immediately made in the case of military persons; and there follow several enactments for the purpose of bringing soldiers who shall mutiny, excite sedition, or desert from the service, to a more exemplary and speedy punishment than the usual forms of law will allow.

Immediately after the Norman conquest of this country the military law consisted in the obligation imposed on the vassals of the crown to follow the king to the field, under penalty of a pecuniary fine or the forfeiture of their land. But the first known record concerning the regulation of the army is believed to be that which was made in the reign of King John; and this relates chiefly to the purchase of provisions at the sales held for supplying the army with necessaries. The ordonnances of Richard II. and of Henry V., and the statutes of Henry VIII., contain many useful rules for the government and discipline of the army. They prescribe obedience to the king and the commanders; they award punishments for gaming, theft, and other crimes; for raising false alarms in the camp, and for the seizure of religious persons. They also contain regulations concerning the disposal of prisoners taken in battle, and concerning the stakes, fascines, ladders, and other materials for military operations, with which the soldiers were to provide themselves. (Grose, vol. ii.)

The early kings of this country do not appear to have exercised, generally, a discretionary power over the army; for a statute of Edward I. states that the king had power to punish soldiers only according to the laws of the realm. The court of high constable and high marshal of England had for many years an exclusive jurisdiction in all military affairs, and this was sometimes extended over the civil courts. But the power of that court was restrained by a statute in the reign of Richard II. (1386), and it subsequently expired. From the time of Henry VII. till the reign of Charles I. the enactment of laws for the government of the army depended on the king alone.

The excesses which, during the last-mentioned reign, were committed by the undisciplined army which that ill-advised prince quartered on such of the people as had refused to lend money to the crown for raising them, led to the promulgation of a martial law, by which power was given to the magistrates to arrest and execute the persons guilty of murders, robberies, and other crimes, as in time of war. The *petition of right* abolished martial law for a time in this country, but it was subsequently restored by the parliament, and several ordinances of great severity were during the interregnum enacted respecting the maintenance of discipline. In the beginning of the reign of James II., after the rebellion of the Duke of Monmouth, several executions took place by martial law; and this may be said to have been the last occasion on which the law was exercised in Great Britain. At the time of the Revolution the present regular code was established for the government of the army; and this, under the name of the 'Mutiny Act,' has ever since been annually renewed by parliament.

The Romans, in time of danger to the state, were accustomed to suspend the law by conferring unlimited power upon the consuls by the formula, "Videant consules ne quid respublica detrimenti capiat" (Sallustius, *Catil.* c. 29). In the case of Catiline's conspiracy many of the conspirators were seized and put to death without a regular trial.

(Grose, *Military Antiquities;* Tytler's *Essay on Military Law,* by Charles James; Samuel, *Historical Account of the British Army;* Major Adye, *Treatise on Military Law;* Major-General C. J. Napier, *Remarks on Military Law.*) [COURT-MARTIAL.]

MASTER AND SERVANT. [SERVANT.]

MASTER OF ARTS. [UNIVERSITY.]

MASTER OF THE ROLLS. [CHANCERY.]

MASTERS EXTRAORDINARY. [CHANCERY.]

MASTERS IN CHANCERY. [CHANCERY.]

MATRONS, JURY OF. [LAW, CRIMINAL, p. 228.]

MAYOR. [MUNICIPAL CORPORATIONS.]

MEDIETAS LINGUAE. [ALIEN; JURY.]

MEMORY, LEGAL. [PRESCRIPTION.]

MENDICITY. [PAUPERISM.]

MERCHANT SEAMEN. [SHIPS.]

MESNE PROCESS. [INSOLVENT.]

MESSENGER. [BANKRUPT.]

MESSENGERS, KING'S, certain officers employed under the secretaries of state, who are kept in readiness to carry dispatches both at home and abroad. They are not now so often employed as formerly in serving the secretaries' warrants for the apprehension of persons for high-treason or other grave offences against the state. Formerly too it was not unusual for them to keep the prisoners they apprehended at their own houses. A remarkable instance of this practice is detailed in the 'Post-Boy' newspaper of 1713. "London, Jan. 10.—Yesterday morning the Morocco ambassador was taken into the custody of one of her majesty's messengers, by way of reprisal for his master's ordering and committing to slavery several of her majesty's subjects." In the same paper, July 14, 1713, we read, "The Emperor of Morocco having released those of her majesty's subjects that had been carried into slavery, Don Bentura de Zari, his ambassador, who was in custody of Mr. Chapman, the messenger, by way of reprisal, was on Saturday last set at liberty." So that his excellency must have passed six months in the messenger's custody.

METROPOLIS. [COLONY.]

METROPOLITAN. [BISHOP, p. 378.]

MIDSHIPMEN are young men ranking as the highest of the first class of petty officers on board a ship of war: their duty is to pass to the seamen the orders of the captain or other superior officer, and to superintend the performance of the duties so commanded. They are educated for their profession at the Royal Naval College, and are required to complete two years' service at sea before they can be rated. Such as are appointed by the special authority of the Lords Commissioners of the Admiralty are denominated Admiralty midshipmen.

By the regulations of 1833, the whole number allowed to be entered on board a ship of war varies according to the rate of the latter; a sixth-rate ship may have eight, and a first-rate may have twenty-four midshipmen. And, on a ship being put in commission, the captain or commander may select them from the Royal Naval College, subject however to the approbation of the lords of the Admiralty.

Should there be more Admiralty or College midshipmen than can be provided for, their lordships may give appointments, as extra-midshipmen, to two at most for any one ship; these must be in the places of an equal number of seamen, and they are included in the complement of midshipmen when vacancies occur.

The monthly pay of an officer of this class is 2*l.* 8*s.* for ships of all rates.

MILITARY FORCE. There are many circumstances to be taken into account in estimating the military power of a country: the character of the people, the spirit of the government under which they live, the natural features of their territory, must amongst other things have their due influence assigned to them. Such an estimate would lead to historical and geographical details, which cannot be treated of satisfactorily in a work like this. The strength of the army which each country in Europe keeps on foot is the most direct indication of its military power; and so far as this is an exponent, the present military resources of all the principal countries in Europe and of the United States of North America are shown in the following statements, which have been collected from the best and most recent authorities.

Austria.—The Austrian army, on the peace and war establishment, is as under:—

	Peace Establishment.	War Establishment.
Infantry ..	314,912	489,240
Cavalry ..	48,842	64,560
Artillery ..	25,675	..

In addition to the peace establishment there are 2167 engineers and miners and sappers; horse and foot gendarmes in Lombardy, 3020 men; quarter-master generals' staff, and pioneers, 4384 men; 4000 men and 6000 horses in the waggon train; a regiment of guards, 666 men; 728 on the staff; and a battalion of pontonniers The annual expenses of the army amount to 77,600,000 florins, = 6,600,000*l.*

Austria has a small naval force, which consists of 3 frigates, 2 corvettes, 3 brigs, and 49 other smaller vessels, the whole carrying 510 guns.

Bavaria.—The infantry of the line are

36,688 in number; cavalry, 12,954; artillery, 5628; gendarmerie, 1875; besides engineers, sappers and miners, &c. The total strength of the army on the peace establishment is 58,239 men, and, in addition, there are 4 companies of veterans. In time of war there is an army of reserve, which consists of a Landwehr of two bans, that is, raised by two levies. The expenses of the military department are 7,319,976 florins, = 625,000*l.*

Belgium.—The army on the peace establishment consists of 2449 officers, and 29,347 non-commissioned officers and men. The sum expended in the department of the Minister of War is 28,022,000 fr., = 1,220,000*l.*; and there is a sum of 1,031,719 fr., = 41,000*l.*, expended under the Ministry of Marine.

Denmark.—Strength of the army on the peace establishment, 25,000 officers and men; on the war establishment, 75,000. The navy consists of 6 ships of the line of 84 guns, 1 of 66 guns; 8 frigates of from 40 to 48 guns; and 16 smaller vessels, the whole number of guns for 31 vessels being 1126; and there are in addition, 92 gun boats, bombs, and other craft, and 4 steamers. The expenses of the army are 3.215,836 reichbankthalers, = 360,000*l.*, and of the navy 1,047,050 reichbankthalers, = 97,000*l.*

France.—The army consists of 338,732 men, and the expenses of the ministry of war amount to 13,000,000*l.* There are at present—

Infantry ..	214,778
Cavalry ..	58,389
Artillery ..	29,306
Engineers ..	8,770
Gendarmerie ..	16,125
Waggon Train, &c.	3,818

The national guards (militia) in France comprise all Frenchmen (ecclesiastics, students at the universities, &c., excepted) between 20 and 60. The expenses of the ministry of marine amount to 3.584,000*l.* There are—

Ships of the line, frigates, and corvettes . .	229
" " building	48
War steamers . .	53
" building	22

The *personnel* of the navy consists of 2 admirals, 10 vice-admirals, 20 rear-admirals, 100 captains of ships of the line, 200 captains of corvettes, 600 lieutenants, making altogether 1372 officers, besides 3438 men of the marine artillery, 16,123 marines, and 297 men of the marine gendarmerie. The force of 170 ships afloat consists of 1649 officers and 24,120 sailors, exclusive of ships laid up in ordinary.

Germanic Confederation.—One of the objects of the Confederation is mutual defence against a common enemy, and the preservation of internal peace among the Federative States is another object. [GERMANIC CONFEDERATION.] Each state is obliged to furnish a military contingent in proportion to its population in 1817. This proportion was fixed at 1 per cent. on the total population; and though the population of the Confederation now amounts to 40,192,344, the military contingent remains at 303,493 men, although the population has increased about ten millions since 1817. The contingent of the seven most important states is as follows:—

	Men.
Austria	94,822
Prussia	79,484
Bavaria	35,600
Würtemberg ..	13,955
Hanover	13,054
Saxony	12,000
Baden	10,000

The total contingent consists of 292,377 effective men:—

Infantry of the line ..	216,343
" Chasseurs ..	11,388
Cavalry	40,754
Artillery (594 guns) and waggon train	20,977
Pioneers and pontonniers	2,915

In conformity with the decrees of the Diet, 29th Oct., 1835, and 10th Dec., 1840, there is a division of infantry of reserve. By the acts of the Diet it is provided that in time of war Mainz should be garrisoned by 7000 Austrian and 7250 Prussian troops; Luxemburg by 3000 Prussian troops, and 2536 troops of the country acting as troops of the Confederation; and that Landau should be garrisoned by 4000 Bavarian troops.

Great Britain.—The number of regiments of infantry and cavalry has already been given. [INFANTRY, p. 110; CA

VALRY, p. 463.] For the year 1845 the force for which Parliamentary supplies were granted was as under:—

	Cavalry.	Infantry.	Total.
Officers ..	826	5,075	5,901
Non-commissioned officers	1,097	8,303	9,400
Rank and file	10,004	104,372	114,376
	11,927	117,750	129,677

The total charge for the above force for one year was 3,528,190*l.*, but of this sum 823,323*l.* was defrayed by the East India Company on account of regiments serving within the Company's territories. The charge of the artillery and engineers is provided for in the ordnance estimates. There is a brigade of horse artillery; 9 battalions of foot artillery of 8 companies each; and a corps of engineers, which comprises sappers and miners, &c. The force of the artillery and engineers is about 9000 men. The different colonial corps which are maintained by the mother country comprise about 5000 men. The army in the pay of the East India Company in 1842 consisted of 210,757 officers and men, of whom 5531 were European officers, 4450 native officers, 19,164 European soldiers, and 181,612 native soldiers. In 1840 the expenditure of the East India Company in India on account of the army amounted to 7,932,268*l.*; and in 1830 it amounted to 9,474,481*l.* The East India Company also maintains a small naval force of its own.

The naval force of Great Britain, including ships in the course of construction, is as follows:—

Rate.	Ships.	Guns.
1st.	27	2074
2nd.	37	3114
3rd.	54	3954
4th.	21	1050
5th.	32	3440
6th.	34	870
	255	14,502
Gun-brigs, &c.	165	1,550
War and other steamers	123	..
Hospital ships, police do., &c.	49	..
	592	16,052

On the 1st of Jan., 1845, the number of ships in commission was 233. The number of officers was 7854; seamen, 29,500; marines, 10,500. The Parliamentary votes for the navy for 1845-46 amounted to 6,936,192*l.* On the opening of the session of 1845 the necessity for an increase in the navy estimates was announced in the speech from the throne in consequence of "the progress of steam navigation, and the demands for protection to the extended commerce of the country." The payments on the annual grants of Parliament for the year 1844 for military and naval purposes were as under:—

Army ..	£6,178,714
Navy ..	5,858,219
Ordnance ..	1,924,311
	13,961,244

Greece.—The regiments of infantry of the line comprise about 3300 men, and there are besides 4 battalions of frontier-guards, 1150 foot, and 160 horse gendarmes, and 283 artillery and 210 cavalry. The expenses of the war department amount at present to 4,063,850 drachmas. The naval force consists of 2 corvettes of 26 guns each, and 33 small vessels, of 104 guns altogether. The naval expenditure is 1,053,573 drachmas.

Hanover.—Infantry, 16,176; cavalry, 3344; artillery, 1466; total strength of the army, 21,206 men; and the military expenditure 1,695,105 thalers, = 290,000*l.*

Holland.—There are 10 regiments of infantry and a garrison battalion; 5 regiments and 1 squadron of cavalry; 4 regiments of artillery; a corps of engineers, sappers and miners, which form 2 battalions; besides a corps of pontonniers. The expenses of the war department are 12,000,000 florins, = 1,025,000*l.* The naval force consists of 85 large vessels of 2207 guns, and 90 small vessels of 200 guns. The officers of the navy are 1 admiral, 2 vice-admirals, 3 rear-admirals, 21 captains, 31 captain-lieutenants, and 272 lieutenants. The expenses of the marine department are 5,296,733 florins, = 452,000*l.*

Mexico.—The regular army in 1844 was 19,624 strong, and the active militia 30,000.

Portugal.—The real force of the army is said to be 18,000 men and 1800 horses; but the full peace establishment is 28,800

men: infantry, including the municipal guards (1780) of Lisbon and Oporto, 21,150; cavalry, 3550; artillery and engineers, 3400. The number of troops in the Portuguese colonies in Africa is stated to be 4600, and in Asia 4400, total 9000. There are 19 companies of veterans, consisting altogether of 3000 men. There are besides nearly 2000 persons on the staff, in the military schools, fortresses, arsenals, and in the civil departments of the army. To these numbers must be added officers who have been temporarily removed from active service in consequence of political events and other causes, and who are said to amount to 2500 in number. The naval force of Portugal consists of 41 sail of 944 guns. There are 2 ships of the line of 80 guns each; 5 frigates of 50 guns; 1 of 44 guns; 8 corvettes of from 20 to 24 guns; 11 brigs of from 10 to 20 guns. The expenses of the ministry of war are 2,488,249,170 reis. The marine department is united with the colonial department, and the naval expenses are not distinguished separately.

Prussia.—The infantry, cavalry, and artillery are divided into guards and regiments of the line. The peace establishment consists of 74,586 infantry, 23,124 cavalry, 15,651 artillery, and 2,544 engineers.

The total strength is 115,905 men. The war establishment is about 205,000 strong. This statement however does not give an adequate idea of the military strength of Prussia. The Landwehr of the first ban is composed of men from 20 to 25 years of age who have served three years in the regular army, and are then discharged for two years, during which they are liable to be called out as the reserve. In time of war this ban is on the same footing as the standing army, and equally liable to serve both at home and abroad. The Landwehr of the second ban comprises all the men aged from 32 to 39, and is called out only in time of war. The Landsturm comprises all men from 17 to 50 who are capable of bearing arms. Including the Landwehr of the first ban (81,048) and the Landwehr of the second ban (62,608) the military force of Prussia amounts to 259,561 men, besides the Landsturm. In time of war the first ban is 130,000 strong. The expenses of the war department are 24,604,208 thalers, = 3,600,000*l.*

Russia.—This great military power has in Europe an army of—

	Men.	Horses.	Cannon.
	386,000	79,720	1200
and a reserve of	182,000	17,920	472
Total	568,800	97,640	1672

Besides this force there is the army of the Caucasus 80,000 strong; and in the Transcaucasian provinces there is also another force of 80,000 men. There are besides—1, a corps d'armée in Finland, which consists of 16 battalions of infantry and a brigade of artillery; 2, a corps in Orenburg of 16 battalions of infantry, a brigade of artillery, and 16 regiments of Cossacs of the Ural; 3, a corps in Siberia of 16 battalions of infantry and a brigade of artillery; and there are besides different corps of Cossacs amounting to 50,000 men. The expenses of the ministry of war are estimated at 30,000,000 thalers, = 5,000,000*l.* The Russian navy consists of 50 ships of the line, 25 frigates, 36 steamers, besides brigs and other small vessels. The expenses of naval establishments are estimated to amount to 12,000,000 thalers, = 1,800,000*l.*

Sardinia.—The strength of the army in time of peace is 25,000 men, and 100,000 in time of war. Sardinia possesses a small naval force of 28 sail, 5 of which are frigates of 60 guns each. The expenses on account of the army and navy are not known.

Saxony.—The regular army comprises 529 officers and 13,700 men, and the military expenditure amounts to 1,339,782 thalers.

Sicilies, Two, Kingdom of the.—In 1838 the army consisted of 44,948 men: 29,381 infantry, 4473 cavalry, 2100 artillery, and 750 engineers. The expenses of this force are not known. There is also a small naval force.

Spain.—There are 99,000 troops of the line: 75,485 infantry, 11,016 cavalry 9809 artillery, and 2795 engineers. To these numbers must be added the provincial militia (43,095), which makes the total military force 142,200 men. This does not include the staff at head-quarters

and the persons employed in the civil departments of the army. The Spanish navy was almost entirely destroyed in the last war. It now consists of only 3 ships of the line, 6 frigates, 3 corvettes, 6 brigs, and 11 other vessels, and a number of small craft. A corvette of 36 guns and two war-steamers respectively of 450 and 220 horse power were lately built in England for the Spanish government. The expenditure of the ministry of war is 322,334,008 reals. The marine department is united with that of commerce and the colonies.

States of the Church.—There are three military divisions: Rome, Ancona, and Bologna. The army in 1840 consisted of 14,680 men, a reserve of 6000, and 3000 national guards of Rome and Bologna. The infantry comprised 9300 men, of whom 3300 were Swiss, and the 6000 others were not the pope's subjects; cavalry, 800; artillery, 800; gendarmes, 1700; arquebusiers, 800; douaniers, 1200; and a guard noble of 80 men. The army cost 1,756,029 scudi, = 380,000*l.*

Sweden and Norway.—Strength of the Swedish army, 39,846; namely, 26,700 infantry, 8000 cavalry, 4340 artillery, and 806 engineers and staff. Sweden has a naval force of 21 ships of the line, 8 frigates, and 255 small craft. The army costs 4,118,240 thalers, = 289,000*l.*, and the navy 1,414,100 thalers, = 100,000*l.* A considerable portion of the expenses of the army is defrayed from the estates of the crown, and the actual military expenditure is not shown in the budget. Norway has a distinct military force of 12,150 men (10,000 infantry, 1000 cavalry, and 1150 artillery and engineers); and a naval force, which consists of 6 brigs and 117 gun-boats. The military and naval expenses of Norway are provided for by the Norwegian storthing. The army costs 700,000 thalers, (specie) = 140,000*l.*; and the navy 245,000 thalers, = 49,000*l.*

Switzerland.—The federal army is 64,019 strong, and consists of 51,864 infantry of the line, 4200 riflemen, 1500 cavalry, 5751 artillery, and 700 engineers, sappers and miners, &c. The expenses are not given in the 'Almanach de Gotha' for 1846.

Turkey.—The army is reckoned at 610,000 men, and is divided into four corps of nearly 40,000 each. There is the corps of Constantinople, of Roumelia, of Asia, and of Arabia. The naval force consists of 47 sail. The expenditure for military and naval purposes is not made public.

United States of North America.—The United States' army consists of 2 regiments of dragoons, 4 of artillery, and 8 of infantry, and comprises 716 officers and 7590 men, besides the staff. The number of all ranks, including non-effective men, is 8600. This force is commanded by a major-general. The whole territory of the United States is divided into 2 military geographical divisions, which are subdivided into 8 geographical departments. The military force is stationed at 58 military posts. The expenses of the war department for the year ending 30th June, 1845, were 8,231,317 dollars, = 1,749,154*l.* The effective force costs 3,053,294 dollars; pensions, 2,013,072 dollars; fortifications and other works of defence, 705,980 dollars; Indian department, 1,021,500 dollars; and there were small items for arming and equipping the militia. The expenditure on account of the military academy at West Point was 123,195 dollars. The cost of the military establishments in 1844-5 was less than it had been in any one year since 1832. In 1837 and 1838 the expenditure in each year amounted to nearly 20,000,000 dollars. In 1814 the expenditure was 20,608,366 dollars. In 1811 it was only 2,259,747 dollars. The militia of the United States consists of 1,759,810 officers and men. In this number are comprised 662 general officers and 15,661 field officers, and the total number of commissioned officers is 69,450.

The navy of the United States consists of 10 ships of the line, 1 of which is of 120 guns and 9 of 74 guns; there are 12 frigates of the first class of 44 guns and 1 of 54; 2 second-class frigates, each of 36 guns; 23 sloops of war of from 16 to 20 guns; 8 brigs of 10 guns each; 8 schooners; 9 steamers; and 4 store-ships.

The sum expended under the direction of the navy department for the year

ending 30th June, 1845, was 6,496,990 dollars = 1,386,610*l.* The largest sum expended on naval establishments since 1811 was 7,963,678 dollars in 1842-3. From 1828 to 1835 the expenditure was under 4,000,000 dollars a year.

MILITARY TENURES. [FEUDAL SYSTEM.]

MILITIA. In Great Britain and Ireland the term is applied particularly to those men who are chosen by ballot to serve for a certain number of years within the limits of these realms. The regulations of the militia service differ widely from those of the conscription on the Continent: under the conscription the troops become members of the regular army, and may be marched beyond the frontiers of the state; whereas the British militia is enrolled only for home service, and may be said to constitute a domestic guard. [CONSCRIPTION.]

The military force of this country in the time of the Saxons was formed by a species of militia, and every five hydes of land were charged with the equipment of a man for the service. The ceorles, or peasants, were enrolled in bodies and placed under the command of the Ealdermen or chiefs, who were elected by the people in the folkmotes. After the Norman conquest of the country the proprietors of land were compelled, by providing men and arms in proportion to their estates, to contribute to the defence of the realm in the event of a threatened invasion. The troops were raised under the authority of *commissions of array*, which were issued by the crown; and the command was sometimes vested in the persons to whom the commissions were granted; though frequently the high constables, or the sheriffs of the counties, commanded in their own districts. This militia seems, at first, to have been liable to be marched to any part of the kingdom at pleasure, but in the reign of Edward III. it was declared by a statute that no man thus raised should be sent out of his county, except in times of public danger. From the reign of Philip and Mary the lords-lieutenants have had the charge, under the king, of raising the militia in their respective counties.

Charles I. having, by the 'Petition of Right,' been deprived of the power of maintaining a disposable body of troops in the country, found himself in 1641 unable to suppress the rebellion then raging in Ireland; and was in consequence induced to commit the charge of restoring peace to the care of the parliament. The parliament immediately availed itself of the circumstance to get into its own hands all the military force of the nation; and in the following year the two houses passed a bill in which it was declared that the power over the militia, and also the command of all forts, castles and garrisons, should be vested in certain commissioners in whom they could confide. The king having refused his assent to the bill, the parliament made a declaration that it was necessary to put the nation in a posture of defence, and immediately issued orders to muster the militia; on the other hand, the king issued commissions of array for a like purpose to some of the nobility, and thus commenced the war which desolated the country for several years.

When Charles II. ascended the throne, the national militia was re-established on its former footing, and the chief command was vested in the king. The lords-lieutenants of counties were immediately subordinate to the king, and granted commissions (subject however to the king's approbation) to the field and regimental officers who commanded under them. New regulations respecting the amount of property which rendered persons liable to the charge of providing men and arms were then established; and at that time no one who had less than 200*l.* yearly income or less than 2400*l.* in goods or money could be compelled to furnish a foot-soldier; nor could one who did not possess 500*l.* per annum or an estate worth 6000*l.* be made to provide a man for the cavalry. Persons having less property were required, according to their means, to contribute towards finding a foot or a horse soldier. The militia was then mustered and trained, by regiments, once a year and during four days; but the men were mustered and trained, by companies, four times in the year, and during two days each time. At the

periods of mustering, every man was obliged to provide himself with his own ammunition.

These regulations, being found expensive, at length ceased to be observed, and the trainings of the militia were discontinued in every part of the realm except the city of London. In 1756, under an apprehension that the country was about to be invaded by a French army, considerable bodies of Hanoverian and Hessian troops were brought over for its defence; the spirit of the nation revolted however at the disgrace of being indebted to foreign mercenaries for protection; and these troops being sent back to the Continent, a national militia was again raised and organised under an act of parliament in the 30th year of George II. The measure was generally popular, though it did not meet with universal approbation; and there were many persons who maintained the opinion that, for want of military knowledge and habits, this species of force could not be relied on in the event of its being called into active service. Experience has however shown that such an opinion is destitute of foundation; and it was soon afterwards admitted that, when well disciplined, these constitutional battalions rivalled those of the regular troops in the performance of all military evolutions. It may be observed here, that the greater part of the 16,000 British troops who gained the battle of Talavera were men drafted from the militia regiments at home; and so recently had they joined the army in Spain, that in the action many of them bore on their accoutrements the numbers of their former corps. (Napier, vol. ii.)

The militia laws were repealed in the 2nd year of George III., when a new act regulating the service of this force was passed; and in the 26th George III. all the previously existing statutes relating to the force were formed into one law. New regulations however were made by acts passed in the 42nd, 51st, and 52nd years of the same reign. The militia of the kingdom when embodied and in active service is subject to the provisions of the Mutiny Act, or Articles of War; but when merely called out for annual training they are not subject to any punishment which affects life or limb. The king is empowered to employ the militia in any part of the United Kingdom, but not out of it. The militia of Great Britain may serve in Ireland, and that of Ireland in Great Britain: the period of service for each out of the island to which it belongs, being at most two years. When called into active service the officers rank with those of an equal grade in the regular army, but as the juniors of each grade, and they may receive promotion for meritorious services during a rebellion or an invasion; but no officer of militia can serve on a court-martial at the trial of an officer or soldier of the regular troops.

All persons not labouring under bodily infirmity and not specially excepted, are liable to be chosen for private militia men and to serve either personally or by substitute. The persons excepted are—peers of the realm; commissioned and non-commissioned officers and privates serving in the regular forces; half-pay officers of the navy, army and marines, and commissioned officers who have served four years in the militia; members of corps of yeomanry and volunteers, and privates serving in the local militia; seamen and persons doing duty in the royal docks, at the gun-wharfs, and powder-magazines; also persons employed under the direction of the Board of Ordnance; resident members of the two universities; clergymen of the Established Church; also Protestant dissenting preachers, provided they take the oaths of allegiance and supremacy, and exercise no other occupation, or only that of schoolmasters; constables or other peace-officers; articled clerks; apprentices; free watermen on the Thames; poor men having more than three legitimate children, and persons above 45 years of age. To alleviate the distress of a poor man, when drawn for the militia, and who has provided a substitute, the churchwardens of the parish are bound to return to him a sum not exceeding 5*l.*, or half the current price of a substitute. No one having served personally, or by substitute, during three years in the militia, can be obliged to serve again till it comes to his turn by

rotation; but if a man has served as a substitute for another, this does not exonerate him from serving again if chosen by the ballot.

The militia when embodied is trained and exercised by battalions or regiments twice in a year, and during fourteen days each time, or once in a year for twenty-eight days, at the discretion of the lords-lieutenants or their deputies.

The balloting of the militia has been suspended by successive acts of parliament since 1829. Since this period the commandants and staff only of the disembodied militia have been kept up. The expenditure for this purpose amounts to about 100,000*l.* a year. The number of militia regiments is 76 for England and Wales, 15 for Scotland, and 38 for Ireland. In December, 1845, a circular was addressed by the War Office to the colonels of the different regiments of militia of Great Britain, requiring them to complete the permanent staff of their respective regiments to the full number limited by 5 & 6 Wm. IV. c. 37, namely, one adjutant, one serjeant-major, and seven serjeants. The staff of each regiment has been recently inspected; and the circular recommends that notwithstanding some of the serjeants were unfit for active duty, they should nevertheless be retained, as they were capable of discharging duties incidental to the ballot, enrolment, as well as the exercise of the militia, and would be able to afford assistance on the first training. It was expected from these preliminaries a balloting would ensue in the next year, but up to 1849 none had taken place.

The supplementary militia is an additional body of men which was first raised in 1793, for the defence of the country at that juncture. It may still be raised when the necessities of the state require it, and it is subject to the same regulations as the ordinary militia. The local militia was a body raised in 1809, for the purpose of replacing, in certain districts, the corps of volunteers. By the 52nd George III., this force may be marched to any part of Great Britain in the event of a rebellion or an invasion, and it may be kept embodied till six months after the former is terminated or the latter repelled. Persons enrolled in the local militia cannot be compelled to serve in the regular militia till one year after their period of service in the former has expired.

The whole amount of the several militia forces in England alone exceeded 200,000 men; and during the late war, when an invasion of the country was apprehended, the force which might have been assembled in arms amounted to more than twice that number of men.

In France a militia was first raised from the provinces during the reign of Louis XIV.; but the several corps were disbanded after the peace of Ryswick. In 1726 was organised a force of the like kind, consisting of men chosen by lot from the towns and villages, and held in readiness to be assembled when required: and in 1778 these provincial troops were formed into 106 battalions. Since the great Revolution, the National Guard may be said to constitute the militia of France.

In the United States of North America, by an act passed in 1792, the principal provisions of which are still in force, all able-bodied white male citizens between the ages of eighteen and forty-five, with certain exceptions, are enrolled in the militia; and when drafts are to be made for active service, the individuals are selected by ballot as in this country. The persons excepted are the executive, judicial, and representative officers of the Union, those who are employed in the post-office department, &c.; and, in some of the states, persons are exempted who have scruples of conscience against bearing arms. The president has the power of calling out the militia of the states; and, when on active service, it is subject to the same rules and articles of war as the regular troops, but courts-martial for the trial of military offenders are composed of militia officers only.

A militia may be a useful addition to a regular standing army, when it can be rendered an efficient body; and provided a large number of persons at a time are not withdrawn from profitable industry. But any militia system which interferes largely with regular occupations is a loss to a country. A regular army is

cheaper than such a militia and more efficient. It may be argued that a militia possess the united characters of defenders of their country and of contributors to its prosperity, while they remain connected in social union with their fellow-citizens, and are interested, like them, in the support of the laws and in the preservation of good government; and that it is in some respects otherwise with the soldiers of a regular army, who are devoted exclusively to the profession of arms, and have few feelings in common with the rest of the community. However, the regular army of Great Britain that is employed at home is insignificant when compared with the regular force of many other countries in Europe; and there is little danger to be apprehended from it to the liberties of the people, even if it should be increased to any considerable amount, because the money required for this service is voted annually by the parliament. [ARMY.]

MINES.—Under COAL TRADE, p. 526; COPPER, STATISTICS OF, p. 631; and IRON, p. 132, an account has been given of the three largest branches of mining industry, to which we now add a brief notice of the produce of the lead and tin mines, in order to give a general view of the importance of the mines of England as a source of national wealth.

Lead.—The quantity raised and smelted in the United Kingdom is believed to amount to about 60,000 tons, which is more than sufficient for our own consumption, and the remainder is exported. Foreign lead is imported into England, chiefly from Spain, but comparatively little is used in this country; in 1844 only 49 tons out of 3058 tons imported.

Tin.—The earliest commercial intercourse with Britain arose out of the trade for tin. (Diod. Sic. v. 38.) From 1817 to 1837 the average annual produce of the tin mines in Cornwall was 4211 tons. A duty of 4*s.*, and fees equivalent to 5*s.*, for each 120 lbs., were paid to the Duchy of Cornwall prior to 1838. The consumption of tin in Great Britain from 1830 to 1837 averaged annually 3363 tons, which was about three times the annual consumption from 1800 to 1810. From 1783 to 1790 the proportion of British tin exported was 7-10ths of the total produce of the mines; and it had gradually diminished until it amounted to 1-5th only from 1830 to 1837. From 1815 to 1831 the annual average importation of foreign tin was 213 tons; from 1831 to 1838 the quantity imported had reached 1527 tons. Nearly all the foreign tin is again exported.

The exports of mineral produce and metals worked into manufactured goods, were as under in 1844:—

	Quantities.	Declared Value.
Brass and copper manufactures	388,882 cwts	£1,736,545
Coals, culm, and cinders	1,754,171 tons	672,056
Hardware and cutlery	451,043 cwts	2,179,087
Iron and steel, wrought and unwrought	458,745 tons	3,193,363
Lead and shot	15,664 tons	270,344
Tin, unwrought	22,216 cwts	77,893
Tin and pewter wares and tin plate ..	..	506,691
Salt	13,476,884 bushels	224,656
		£8,860,635

Metals imported in 1844:—

	Imported.	Home Consumption.
Iron, bar .	24,483 tons	21,599
Lead, pig and sheet	3,058 tons	49
Tin . .	12,085 cwts	2,056

According to the census of 1841 the number of persons employed in mines in Great Britain was as follows:—Coal, 118,233; Copper, 15,407; Lead, 11,419; Iron,* 10,449; Tin, 6,101; Manganese, 275; Salt, 268; Mineral not specified,* 31,173;—Total, 193,825.

The above number of persons who are

* The coal-miners and iron-miners easily exchange occupations. In 1841 the iron trade was in a state of great depression, and the coal-mines were, on the other hand, in full activity.

employed under ground in mines is nearly equal to an eighth of the total numbers employed in the cultivation of the surface; to this number might perhaps be added 18,148 quarriers. The number of persons employed in the manufacture (smelting, &c.) of metals was 36,209, as follows:—

Iron	29,497
Copper	2,126
Lead	1,293
Tin	1,320
Metal not specified	1,973

The total annual value (profits) of mines and iron works assessed to the Property and Income Tax in 1843 was as follows:—

	Mines.	Iron Works.
England and Wales	£2,081,387	559,435
Scotland ..	177,592	147,412

The mines in Durham were assessed at 392,112*l.*; those in Lancashire at 348,006*l.*; the Yorkshire mines at 154,073*l.*; and the Staffordshire mines at 196,149*l.*

The Staffordshire iron works were assessed at 155,685*l.*; the Monmouthshire works at 56,897*l.*; Yorkshire iron works at 67,890*l.*; and Shropshire at 34,279*l.*

MINISTER. [BENEFICE.]

MINOR, MINORITY.—A person is a minor, according to English law, when he is under twenty-one years of age. The term applies either to a male or female. [AGE.]

The term is derived from the Roman law, in which persons under twenty-five years of age (minores viginti annis or annorum) were, to a certain extent, under the care of a curator. [CURATOR.]

MINT. The place where money is coined, from the Anglo-Saxon 'mynet,' and that in all probability from the Latin *moneta*. It is a part of the royal prerogative to coin money. [COINING.] The Roman *moneta* was the place where the money was coined. It was a building on the Capitoline Hill, which was attached to the Temple of Juno Moneta. The subject of the earliest coinage is treated by Eckhel, *Doctrina Numorum Veterum*, Prolegomena, vol. i.

On the early Anglo-Saxon coins are found, in addition to the names of the kings, those of other persons also, who are conjectured to have been the moneyers, because on later Anglo-Saxon money the names of those officers frequently occur, with the addition of their title of office. From this circumstance we may probably conclude that they were responsible for the integrity of the money; and that they were the principal officers of the mint.

In the Anglo-Saxon times an officer called the reeve seems also to have had some kind of connection with the mint, or some jurisdiction over it; for in the laws of Canute it is provided, that if any person accused of false coinage should plead that he did it by licence from the reeve, that officer should clear himself by the triple ordeal. If he failed to do this, he was to suffer the same punishment as the falsifier himself, which was the loss of that hand by which the crime was committed, without any redemption either by gold or silver. (*Leg. Anglo-Saxon.*, p 134; *Ll. Cnuti*, § 8.)

After the Norman conquest the officers of the mint appear to have been in some degree under the authority of the Court of Exchequer, as they were admitted to their respective offices in that court, and took the usual oath of office before the treasurer and barons.

The mint did not attain its full constitution of superior officers until the 18 Edward II., when a comptroller first appeared and delivered in his account, distinct from those of the warden and master, whose accounts also were distinct from each other. Thus they operated as mutual checks, and no fraud could be practised without the concurrence of all these three persons. One of the principal offices, namely, that of cuneator, and probably others, descended by inheritance even in the female line, and the inheritor was sometimes allowed to sell it. See Ruding's account of this office in his 'Annals of the Coinage of Britain,' 8vo. edit., vol. i., pp. 109-114, where its descent is traced from the time of Domesday Book to the 4 Richard II.

In the Anglo-Saxon and the early Norman period there were many mints beside the king's, and some were continued to a much later time. Barons and bishops struck money, especially in King

Stephen's reign, and in two or three instances the privilege of coining was granted to the greater monasteries. Wolsey exercised this franchise, both as Bishop of Durham and Archbishop of York; and there are coins of the Archbishops of Canterbury, distinctly marked as such, at intervals from Jaenberht, consecrated in 793, to the close of the reign of Henry VIII. Of the lay barons of Stephen's time, we have but one coin now extant, usually ascribed to Robert Earl of Gloucester.

From a very early time the moneyers seem to have enjoyed exclusive privileges. In the 33 Henry II. the moneyers of York were expressly exempted from the payment of the 'Donum' which was assessed upon the men of that city. (Madox, vol. i., p. 635.) In the 18 Henry III. the mayor, &c., of London were commanded not to infringe upon the liberties of the king's moneyers of London, by exacting from them tallages or other customs contrary to their privileges (Cl. 18 Henry III., m. 30); and before his 41st year those privileges appear to have been extended to the whole body of officers belonging to the mint; for at that time the bailiffs, &c. of Canterbury were ordered to appear in the Exchequer to receive judgment for having distrained upon the officers of that mint. (Madox, *Hist. Exch.*, vol. i., p. 748; Ruding, *Annals*, vol. iv., p. 273.)

The earliest grant of these privileges by charter was in the reign of Edward I., when the officers of the exchange and of the mint were (by the names of the keepers of the changes of the city of London and Canterbury, the labourers, or workers, money-makers, or coiners, and other ministers deputed or appointed unto those things which touch the office of the changes aforesaid) freed from all tallages, and were not to be put into any assizes, juries, or recognizance, and were to plead before the said keepers of the changes only, except in pleas appertaining unto freehold and the crown.

These privileges were confirmed by Edward II. in his second year, with some additions. Letters-patent to the same effect were issued by Edward III., Richard II., Edward IV., Henry VII., Henry VIII., Edward VI., and Philip and Mary.* All these are referred to in the charter of incorporation which was granted by Elizabeth in the first year of her reign, but those of Edward I. and Edward II. alone are given at length.

In that year Queen Elizabeth, at the humble suit of the keeper of the changes, the labourers, coiners, and ministers deputed or appointed to those things which touch the offices of the change, and in consideration of certain general words in the former grants which had occasioned them and their predecessors to be molested, granted and confirmed to them the letters patent and grants aforesaid; and incorporated them by the name of the keeper of the changes, and the workmen, coiners, and other ministers deputed to the said office. This charter gave all the officers various privileges and exemptions. This charter bore date at Westminster on the 20th February, and there were subsequent confirmations of it in the second, third, fourth, and fifth years of her reign. Ruding has cited various instances in which these privileges were intrenched upon; they were nevertheless confirmed by King James I. in the second year of his reign; by King Charles II. in his fourteenth year; and by the indenture which was in force in the year 1744, and which established the officers in their houses, places, &c., and in their charters and privileges.

These privileges they continue to enjoy to the present time. (Ruding, vol. i., p. 47.)

The following is the establishment of which the Mint at present consists:—

1. A Master and Worker. The salary is 2000*l*. a year. The office of master of the Mint is usually conjoined with some other high official situation. In 1845, the Right Hon. W. E. Gladstone was President of the Board of Trade and Master of the Mint, and he was also a cabinet minister; on his retiring from office, his successor in the mastership of the Mint was Vice-President of the

* There were also confirmations in the 1 Henry IV., Pat. p. 5, m. 25; 1 Henry V., Pat., m. 28; 5 Henry VI., Pat., p. 1. m. 17; 18 Henry VI., Pat., p. 3, m. 25; 23 Henry VI., Mich. Commun, rot. 17; Madox's MSS., No. 69, p. 94.

Board of Trade, but was not in the cabinet.

2. The principal officers, forming a Board, viz :—

The Deputy Master,
Comptroller,
King's Assay Master,
King's Clerk, and the
Superintendent of Machinery and Dies.

3. Officers in the service, viz. :—

The Master Assayer,
Probationer Assayer,
Weigher and Teller,
Surveyor of Meltings,
Surveyor of Money-Presses,
Chief Engraver,
Second Engraver,
Medallist, and
Clerk Assistant and Deputy Master.

Besides these there are four clerks in the Mint-office, two porters, and two or three other inferior persons.

The Company of Moneyers receive a rate on the coinage, conditionally 40*l.* to each member when the coinage is under 500,000*l.*

Ruding (vol. i., p. 51-58) has given the tables of fees and wages for the several officers in the years 1584, 1599, 1649, 1689, 1739, 1743, and 1797.

A comparative statement of the salaries and allowances, contingent expenses, and rates of coinage, between the establishments of the French and English mints in 1836 will be found p. 87-89 of the Appendix to the 'Report from the Select Committee of the House of Commons on the Royal Mint,' ordered to be printed 30th June, 1837.

In ancient times extraordinary methods were resorted to in order to furnish the mint with workmen. Thus in the 31st Henry III., a writ was issued, authorising Reyner de Brussell to bring into England, from beyond the seas, persons skilled in the coinage and exchange of silver, to work in the kingdom at the king's charge. (Pat., 31 Hen. III., m. 3.) And in the 25th Edw. III., Henry de Brussell and John de Cicestra, masters of the mint, were appointed by letters-patent to choose and take as many goldsmiths, smiths, and other workmen in the city of London and other places, where it might seem expedient to them, as should be necessary for the works of the mint in the Tower of London; and to bring the said workmen to the said Tower, and to place them there to work at the wages allowed by the said masters. And any of them which should be rebellious in that case, to seize and arrest, and to detain in prison within the said Tower, and to keep in safe custody until the king should determine upon their punishment. These letters were directed to all sheriffs, &c., who were commanded to assist the said masters in carrying their provisions into execution. (Pat., 25 Edward III., p. 2, m. 13 dors.) This power to take workmen, &c., for the service of the mint was not discontinued in the reign of Elizabeth. (*Indent. with Lorison*, 14 Elizabeth, in *Harl. MSS.*, Brit. Mus., 698.)

The custom of placing the moneyer's name upon the coins prevailed, as already observed, at a very early period; indeed we find it upon the money of Ecghberht, king of Kent, which is the second in point of antiquity in the Anglo-Saxon series, and must be dated about the middle of the seventh century. It was usually stamped upon the reverse of the coin, but in some few instances it is found upon the obverse, whilst the name of the king is removed to the other side. The names of two moneyers sometimes occur upon the same coin. From the time of Aethelstan, with some few exceptions only, the name of the town was added, probably in conformity to his law that the money should be coined within some town. (Wilkins, *Leg. Anglo-Sax.*, p. 319.) The name of the moneyer is not found lower than the reign of Edward I., but that of the mint was not entirely disused in the last year of Queen Elizabeth.

The mode of coinage in early times in this country, was very rude; the sole expedient employed being to fix one die firmly in a wooden block, and to hold the other in the hand as a puncheon; when, by striking the latter forcibly, and repeatedly, with a hammer, the impression required was at length worked up. That no improvement of any importance was made until the power of the screw was applied to coinage in the French mint

about the middle of the sixteenth century. (Le Blanc, *Traité Hist. de Monnoyes de France*, p. 268.) The new invention was not however admitted into our mint before the year 1561, when it was used together with the old method of coining by the hammer, until the latter was wholly laid aside in the 14th Charles II., A.D. 1662. The coinage has been gradually improved by giving the rim of the money a completely circular form, instead of being, as it formerly was, ruder and unfinished, and by milling the edges.

From the money, when completely finished, two pieces are to be taken from every fifteen pounds weight of gold, and two, at least, from every sixty pounds weight of silver, one for the private assay within the mint, and the other for the trial of the PIX. No. 347 of the Parliamentary Papers (Session 1845) is a copy of the Report of the Pix jury which made the assays and trials of Her Majesty's coins in the Pix of the mint on the 17th of May, 1845. "The whole of the monies are weighed and tried in the aggregate, and from the heap a certain number of pieces, about a pound in weight, are taken promiscuously, and melted into an ingot, from which a portion is cut for the assay. The computations and the result of these proceedings are shown in the verdict."

The following is the process which at present takes place, from the time at which an ingot of gold is imported into the mint, to the period when it is issued from the mint in the shape of money, as stated in evidence to the committee on the royal mint, April 18, 1837, by J. W. Morrison, Esq., the deputy-master.

"The bullion or ingots are brought to the mint, and it being ascertained that such ingot has been melted by approved refiners in the trade, and also an assay upon the purchase by the king's assayer, they are taken into the master's assay-office, where pieces are cut out for him to assay; the ingots are then locked up under the keys of the deputy-master, comptroller, and king's clerk, and as soon as the ingots are reported by the master assayer, they are weighed by the weigher and teller in the mint-office, in the presence of the importer and the mint officers and the clerks, who calculate the fineness of each ingot, and ascertain the standard value of the whole importation, when a mint bill and receipt is given to the importer, signed by the deputy-master and witnessed by the comptroller and king's clerk; the mint being bound to return an equal weight of standard coin. The ingots are then made up into pots of a certain weight, and a portion of alloy or fine metal calculated, which is to be added in the melting to produce the standard; they are then cast into bars fit for the moneyer's operation; an assay being made by the king's assayer, with reference to the delivery of the bars, from a sample taken from each pot by the surveyor of melting for that assay, the moneyer rolls the bars to proper thickness, and cuts out the piece for the stamping of the intended coin; and having made that piece of the right weight, they are coined, and are put into bags of a given weight to be examined by the king's assayer, the comptroller, the king's clerk, weigher and teller, at the process called the pix. The money is then locked up till the assay is reported by the king's assayer, when it is delivered to the owner weight for weight, as expressed in the mint bill which had been given, and which bill and receipt are then returned."

The largest amount of gold and silver coined in any one year between 1816 and 1845 was—gold, 1821, 9,520,758*l.*; silver, 1817, 2,436,297*l.* There is no seignorage or charge for coining gold. In 1843 the seignorage which accrued on the coinage of silver amounted to 26,649*l.*, and on copper to 21,964*l.* [MONEY, p. 350.]

Burke, in his speech on economical reform in 1780, proposed that the Mint should be abolished as a public establishment, and that the Bank of England should take charge of the business of coining. "The Mint," he said, "is a manufacture, and it is nothing else; and it ought to be undertaken upon the principles of a manufacture: that is, for the best and cheapest execution, by a contract upon proper securities and under proper regulations."

There is a provision in the Act of

Union for maintaining a mint in Scotland, and although every species of the money of Great Britain and Ireland was coined in London, the establishment of a mint was retained in Scotland for above a century after the union.

The reader may consult the *Report from the Select Committee of the House of Commons*, already referred to. in the Appendix to which he will also find a large collection of papers relating to the French mint, the mint of the United States of North America, and the Dutch mint.

MISCHIEF, MALICIOUS. [MALICIOUS INJURIES.]

MISDEMEANOUR. [LAW, CRIMINAL, p. 181.]

MISPRISION OF TREASON. [LAW, CRIMINAL, p. 187, *note*.]

MONACHISM, MONASTERIES. [MONK.]

MODUS. [TITHES.]

MONARCHY. [See p. 362.]

MONEY is the medium of exchange by which the value of commodities is estimated, and is at once the representative and equivalent of such value.

Barter is naturally the first form in which any commerce is carried on. A man having produced or obtained more of any article than he requires for his own use, exchanges a part of it for some other article which he desires to possess. But this simple form of exchange is adapted to a rude state of society only, where the objects of exchange are not numerous, and where their value has not been ascertained with precision. As soon as the relations of civilized life are established in a community, some medium of exchange becomes necessary. Objects of every variety are bought and sold, the production of which requires various amounts of labour; these at different times are relatively abundant or scarce; labour is bargained for as well as its products: and at length the exchangeable value of things, in relation to each other, becomes defined and needs some common standard or measure, by which it may be expressed and known. It is not sufficient to know that a given quantity of corn will exchange for a given quantity of a man's labour, for their relative value is not always the same; but if a standard be established by which each can be measured, their relative value can always be ascertained as well as their positive value, independently of each other.

As a measure of value only money is thus a most important auxiliary of commerce. One commodity from its nature must be measured by its weight, another by its length, a third by its cubic contents, others by their number. The diversity of their nature, therefore, makes it impossible to apply one description of measure to their several quantities; but the value of each may be measured by one standard common to all. Until such a standard has been agreed upon, the difficulties of any extensive commerce are incalculable. One man may have nothing but corn to offer for other commodities, the owners of which may not have ascertained the quantity of corn which would be an equivalent for their respective goods. To effect an exchange these parties would either have to guess what quantity of each kind of goods might justly be exchanged for one another, or would be guided by their own experience in their particular trades. Whenever they wanted a new commodity their experience would fail them, and they must guess once more. But with money all becomes easy; each man affixes a price to his own commodities, and even if barter should continue to be the form in which exchanges are effected, every bargain could be made with the utmost simplicity: for commodities of every description would have a denomination of value affixed to them, common to all and understood by every body.

But however great may be the importance of money as a measure of value in facilitating the exchange of commodities, it is infinitely more important in another character. In order to exchange his goods it is not sufficient that a man should be able to measure their value, but he must also be able to find others who, having a different description of goods to offer as an equivalent, are willing to accept his goods in exchange, in such quantities as he wishes to dispose of. Not to enlarge upon the obvious difficulties of barter:—suppose one man to have nothing but corn to sell, and another nothing but bricks: how can any exchange be effected unless

each should happen to require the other's goods? But presuming that this is actually the case, is it probable that each will require as much of the other as will be an exact equivalent; or in other words, as much as represents an equal amount of labour? Such a coincidence might occur once or twice, but it is not conceivable that it should occur often. Corn is consumed annually: but bricks once produced endure for many years; and their interchange between two persons in equal proportions, for any length of time, would therefore be extremely inconvenient. In order to dispose of his corn, the producer might buy the bricks and dispose of them to others; but in that case, in addition to the business of growing corn he must become a seller of bricks. But human labour has a natural tendency to a division of employments; and as society advances in wealth and in the arts of life, men confine themselves more and more to distinct occupations, instead of practising many at the same time. [DIVISION OF EMPLOYMENTS.] With this tendency a system of simple barter is obviously inconsistent; as by the one, a man is led to apply the whole of his labour to one business: by the other, he is drawn into many. By the one he has only to produce and sell: by the other he must also buy what he does not want himself, and become a trader.

But all these difficulties are removed if some one commodity can be discovered which represents a certain amount of labour, and which all persons agree to accept as an equivalent for the products of their own industry. If such a commodity be found, it is no longer necessary for men to exchange their goods directly with each other: they have a medium of exchange, which they can obtain for their own goods, and with which they can purchase the goods of others. This medium, whatever it may be, is Money.

When money has assumed the character of a medium of exchange and equivalent of value, the cumbrous mechanism of barter gives place to commerce. But what must be the qualities of an article which all men are willing to accept for the products of their own labour? It is now no longer like a weight or measure, the mere instrument for assessing the value of commodities; but, to use the words of Locke, "it is the thing bargained for as well as the measure of the bargain." A bargain is complete when money has been paid for goods; it has no reference to the price of other goods, nor to any circumstance whatever. One party parts with his goods, the other pays his money as an absolute equivalent. But though money as a medium of exchange thus differs from money as a mere standard of value; yet in both characters it should possess, if it be possible, one quality above all others—an invariable equality of value at all times and under all circumstances. As a measure of value it is as essential that it should always be the same, as that a yard should always be of the same length. And unless, as a medium of exchange, its value be always the same, all bargains are disturbed. He who gives his labour or his goods to another in exchange for a delusive denomination of value instead of for a full equivalent which he expects to receive, is as much defrauded as one who should bargain for a yard of cloth and receive short measure.

But however desirable may be the invariableness of money, complete uniformity of value is an impossibility. There is no such thing as absolute value. All descriptions of measures correspond with absolute qualities, such as length, weight, and number, and may be invariable. But as value is a relative and not an absolute quality, it can have no invariable measure or constant representative. The value of all commodities is continually changing; some more and some less than others. Their real value depends upon the quantity of labour expended upon them; but temporary variations in their exchangeable value are caused by abundance or scarcity—by the relations which subsist between supply and demand. No commodity yet discovered is exempt from the laws which affect all others. If precisely the same quantity of labour were required for a long series of years to produce equal quantities of any commodity, its real value would remain unchanged; but if it were at the same time an object of de-

mand amongst men, variations in the proportion between its supply and the demand for it would affect its exchangeable value. It follows therefore, that to be an invariable standard, money must always be produced by the same amount of labour, and in such quantities as shall constantly bear the same proportion to the demand for it.

But even if any description of money could be invented which possessed these extraordinary qualities, the value of all other articles would still be variable, and thus its representative character would be disturbed. At one time, for example, a given denomination of money will represent a certain number of bushels of wheat; at another time, the same money, unchanged in real value or in demand, will represent a much greater number. Every application of machinery, every addition to the skill and experience of mankind facilitates production, and by saving labour reduces the real value of commodities. Their value is also liable to temporary depreciation from other causes, from too abundant a supply, or from an insufficient demand. But if money maintain the same value, in relation to itself, notwithstanding the diminished value of other articles, its proportionate value is practically increasing. The consequences of a growing disproportion between the representative value of money and the value of commodities are these: 1st. a producer has to give a larger quantity of his goods than before for the same amount of money. 2ndly, Those who are entitled to payments in money, receive the value of a greater quantity of commodities than they would have received if the relative value of money and of commodities had not been disturbed. It follows from these circumstances, that as a general rule, all creditors whose debts have been calculated in money derive advantage from any increase in its value relatively to commodities; while debtors derive benefit from any circumstance which raises the value of commodities, as compared with that of money: whether it be by increasing the value of the former, or by depreciating the value of the latter. To make these principles intelligible the following example may not be superfluous: Suppose a farmer to hold land under a lease for twenty-one years at a money rent; and that from any cause the value of agricultural produce is no longer represented by money in the same manner as when the arrangement was entered into with his landlord, but that the value of money has been relatively increased. In order to pay his rent, he must now sell a larger proportion of his produce, even though its production may have cost him as much as ever. On the other hand, his landlord receives the same money rent, but is able to purchase more commodities than before on account of the increased comparative value of money.

Thus far we have thought it convenient to confine ourselves to the abstract qualities and uses of money, and to explain such general principles only as are introductory to the consideration of particular kinds of money, and of the modes of using and regulating them.

In all ages of the world, and in nearly all countries, metals seem to have been used, as it were by common consent, to serve the purposes of money. It is true, that other articles have also been used, and still are used, such as paper in highly civilized countries, and cowrie shells in the less civilized parts of Africa; but in all, some portion of the currency has been and is composed of metals. We read of metals amongst the Jews, the Chinese, the Egyptians, the Persians, the Greeks, the Romans. In the earliest annals of commerce they are spoken of as objects of value and of exchange; and wherever commerce is carried on they are still used as money. But as they were introduced, for this purpose, in very remote times, it is not probable that they were selected because their value was supposed to be less variable than that of other commodities. More than two thousand years ago, indeed, Aristotle saw clearly (but what did he not see clearly?*) that the

* Many important principles of political economy, the discovery of which is attributed to Adam Smith and other modern writers, may be found in the works of Aristotle, expressed with wonderful precision and clearness. Mr. M'Culloch, for example, refers to Locke as the first who laid it down that labour is the source of value; but the same principle was affirmed by Aristotle

principal use of metallic money was that its value was less fluctuating than that of most other substances (*Ethic. Nicom.* v. 5). But however clearly this great philosopher may have observed the true character of money, many ages after the circulation of metals, those who first used them were men engaged in common barter, who considered their own convenience and security without reference to any general objects of public utility. They must have used metals, not as a standard of value, but as an article of exchange, which facilitated their barter. All metals are of great utility and have always been sought with eagerness for various purposes of use and ornament: but gold and silver are especially objects of desire. Their comparative scarcity, the difficulty and labour of procuring them, their extraordinary beauty, their singular purity, their adaptation to purposes of art, of luxury, and display; their durability and compactness; must all have contributed to render them most suitable objects of exchange. They were easily conveyed from place to place; a small quantity would obtain large supplies of other articles; they were certain to find a market; none would refuse to accept articles in payment which they could immediately transfer to others: and thus gold and silver naturally became articles of commerce, readily exchangeable for all other articles, before they were circulated as money, and were acknowledged as such by law and custom.

The transition of the precious metals from the condition of mere articles of exchange, amongst many others, to that of a recognised standard of value by which the worth of all other articles was estimated, was very natural. Merchants carrying their wares to a distant market would soon find it necessary to calculate the quantity of gold and silver which they could obtain, rather than the uncertain quantities and bulk of other commodities. They would not know what articles it would be prudent to buy until they reached the market and examined their quality and prices: but a little experience would enable them to predict the quantity of gold and silver which would be an equivalent for their own merchandise. Merchants, from different parts of the world, meeting one another in the same markets, and finding the convenience of assessing the value of their goods in gold and silver, would begin to offer them for certain quantities of those metals, instead of engaging, more directly, in bartering one description of goods for another; and thus, by the ordinary course of trade, without any law or binding custom, the precious metals would become the measure of value and the medium of exchange.

But when gold and silver had attained this position in commerce, they were not the less objects of barter; nor were they distinguishable, in character, from any other articles of exchange. They were weighed, and being of the required fineness, a given weight was known as a denomination of value, but in the same manner only as the value of a bushel of wheat may be known. In the earliest ages gold and silver seem to have been universally exchanged in bars, and valued by weight and fineness only. The same custom exists at the present day in China. There is no silver coinage, "but the smallest payments, if not made in the copper *tchen*, are effected by exchanging bits of silver, whose weight is ascertained by a little ivory balance, on the principle of the steelyard." (Davis's *China*, c. 22.)

Notwithstanding the ease with which gold and silver are divided into the smallest portions, each of which is of the same intrinsic purity and value as the others, the trouble of weighing each piece, and the difficulty of assaying it, render these metals in bars, or other unfashioned forms, extremely imperfect instruments of exchange, especially when they are used in small quantities. However accurately they may be weighed, it

in more than one part of his works, and more accurately than by Locke (*Ethic. Nicom.* v. 5). Again, he perceived, perhaps as distinctly as any other writer, the distinction between productive and unproductive labour (*Metaph.* ix. 8). As another example we would refer to his account of the origin of barter, its development into commerce, and the connexion of the latter with the use of money (*Pol.* i. 6). And, lastly, any economist must be struck with his clear perception of the relations between a division of employments and the exchange of the products of labour (*Ib.* ii. 2).

requires considerable skill and labour to assay them, which in small pieces would scarcely be repaid. Even in large quantities the difficulty of assaying their fineness, in countries which have made considerable advances in the arts, is greater than might be expected. The Chinese affect much accuracy in the art of assaying. The stamped ingots of silver in which their taxes are paid, are required to contain ninety-eight parts in a hundred of pure silver, and two per cent. only of alloy; and strict regulations for maintaining this standard are rigidly enforced. Hence we should naturally infer that the attention of merchants and of all persons dealing in silver would be particularly directed to the most accurate assays. Yet, at Canton, an enormous trade in opium has, for a long series of years, been conducted entirely in sysee silver, which has been found to contain so large an admixture of gold that it bears a premium of five or six per cent. for exportation to England. (Davis's *China*, § 22.)

If the Chinese have been unable to discover the presence of gold, which it would be their interest to appropriate, how difficult must it be to detect alloys of baser metals in gold or silver circulated amongst a people in the ordinary course of trade. To obviate this difficulty coinage was introduced, by which portions of gold, silver, copper, and other metals have been impressed with distinctive marks, denoting their character, and have become current under certain denominations, according to their respective weight, fineness, and value. These coins have always been issued by the government of each country as a guarantee of their genuineness; and the counterfeiting of them has been punished as a serious offence against the state.

In rich countries these three metals of gold, silver, and copper are very convenient substances for the manufacture of coins, on account of the differences in their relative value. Gold coins containing a high value in small compass, are convenient for large payments, silver coins for smaller payments, and copper coins for those of the lowest value; while all the larger coins are multiples of the smaller. These several descriptions of coin serve the ordinary purposes of trade sufficiently well: they are universally received as money within the country in which they circulate, and the principal part of all payments of moderate amount are made in them. But payments of large amounts cannot conveniently be made in coins of any metal; and in this and other countries paper money and various forms of credit have been used as substitutes. Of these we shall speak presently; but it will first be necessary to consider the suitableness of gold and silver coins as standards of value.

Coins made of these metals are not exempt from the laws which govern the prices of other commodities. They have accordingly varied in their own value, in successive periods, and are at no time secure from variation. In the sixteenth century new mines of extraordinary richness were opened in America which were worked with such ease, and were so unusually productive, that the value of the precious metals, as representatives of so much labour expended in their production, was lowered all over Europe to about a third of their previous value. And thus a revolution, so to speak, was effected in the gold and silver coins of that period, as standards of value. Similar causes have produced the same effect, at other times, though not in the same degree; and we cannot be secured against their recurrence.

If the production of gold and silver be free, like that of other commodities, the only circumstance which can permanently diminish their value, in relation to themselves at different periods, is a reduction in the quantity of labour required for their production. But they are also liable to fluctuations in their value by reason of variations in the demand for them in particular countries. Though fashioned into coins, they retain all their properties as articles of commerce: they are readily fused into other forms, and rendered available for all purposes of use and ornament; and the occasions of commerce often withdraw them from one country and attract them elsewhere. From these causes their value, instead of being always the same, is liable to permanent alterations, and also to occasional fluctuation.

Both gold and silver are alike subject to these general laws, and are therefore imperfect standards of value. If one be the standard independently of the other, it is liable to change in itself, and also in its relation to other commodities: if both be adopted as standards at the same time, they will not only each vary in themselves, and in relation to other commodities, but they will vary also in regard to each other. And thus another element of uncertainty is introduced into the coinage, which becomes still more imperfect as a standard.

But it is not customary for the state to allow coins to fluctuate in their legal value according to the circumstances which determine the market prices of gold and silver. Coinage does not merely authenticate the weight and fineness of a piece of metal, leaving it to find its own level in exchange for other commodities; but it attaches to it a definite value, by fixing the standard price of the metal as well as the weight and fineness of the coin. The object of this regulation is to maintain a greater equality in the standard; and as regards small fluctuations in the value of the precious metals, it will generally have that effect. But if any considerable disproportion should arise between the standard price of bullion and the market price, no such regulation can prevent a practical change in the standard. If the market price should become considerably higher than the standard price, the coins would be melted down for the sake of the profit arising from the difference. If it should become considerably lower for any length of time, the value of the coins, though nominally unchanged, would in fact be depreciated; for they would exchange for a less quantity of other commodities than they exchanged for before. And thus a currency composed exclusively of metals cannot be made an accurate standard of value by any expedients of law.

We may here remark, however, that a seignorage, or charge by government to cover the expenses of coinage, acts as a protection, within certain limits, against the melting of coins, because unless their value be depreciated by over-issue, the whole charge will be added to their value as coins, and will be lost when they are melted. For this amongst other reasons a seignorage should always be charged by the state.

There is yet another imperfection in coins, as standards of value. Notwithstanding their natural durability, they are subject to continual wear, and must be gradually diminished in weight. They are also exposed to the fraudulent experiments of men whose trade it is to rob them of a portion of their weight by artificial wear. The value of coins is therefore certain to be continually depreciated by loss of weight, apart from any other causes of variation.

From all these circumstances it is evident that gold and silver coins have qualities inherent in them which render them necessarily imperfect standards of value, with whatever care and skill they may be regulated. But, in addition to these natural causes of imperfection, others have been artificially produced by erroneous or dishonest political expedients. There is no country perhaps in which the coinage has never been debased by the government. Debasement of coins was formerly a common artifice for increasing the revenue of states, and it has been effected in three different ways:—1, by diminishing the quantity of metal, of the standard fineness, in coins of a given denomination; 2, by raising their nominal value and ordaining that they shall pass current at a higher rate; and, 3, by debasing the metal itself—*i.e* by leaving the coin of the same weight as before, but reducing the quantity of pure metal and increasing the quantity of alloy. In all these ways have the coins of England been debased at different periods of our history; and to so great an extent were they debased by successive kings, that from the Conquest to the reign of Queen Elizabeth, the total debasements of the silver coins have been estimated at 65 per cent. (Lord Liverpool *On Coins*, p. 35.) By expedients of an opposite character the standard of coins may be artificially raised; and the result of measures connected with the coinage of this country was, that in a period of 115 years, from the 1st James I. to the 1st George I. the value of gold coins, as compared with

silver coins, was raised 39 per cent. (Ibid, p. 84.) No further examples are needed to prove the inconstancy of coins as a standard, when they form the sole currency of a country.

But notwithstanding these imperfections, the convenience of gold or silver coinage, as money, has led to the universal adoption of one or the other, or of both conjointly, as the standard of value. The objections to a double standard have already been noticed, but throughout a long period of the history of this country we find gold and silver prevailing equally as standards. There appears to have been no public coinage of gold, at the royal mints, prior to the 41st Henry III. The gold pennies coined at that time were expressly declared not to be a legal tender, and never obtained a very general circulation. Silver was then the universal medium of exchange, and the people were unaccustomed to the use of gold as money: but as their commerce and riches increased gold naturally became more convenient for large payments. The results of this progress became apparent in the reign of Edward III., who established a general circulation of gold coins, which, though partially introduced nearly a hundred years before, by Henry III., had not been continued by his successors. From this time gold and silver coins circulated together, and were both legal tenders. To what an extent their relative value varied at different periods, has already been noticed; but they were equally recognised by law as authorised standards of value in all payments whatever, until the year 1774, when it was declared by statute (14 Geo. III. c. 42) that, in future, silver coins should not be a legal tender in payment of any sum exceeding 25*l.*, except according to their value by weight, at the rate of 5*s.* 2*d.* an ounce. This was a temporary law, but was continued by several statutes until the year 1816, when the legal tender of silver coins was further restricted to payments not exceeding forty shillings (56 Geo. III. c. 68). And thus, as all large payments were made and calculated in gold coins, they became the sole standard of value, so far as coinage alone was the real medium of exchange.

The expediency of adopting gold as the standard instead of silver, has been a question of much doubt and controversy amongst the highest authorities upon monetary affairs. It was the opinion of Locke, of Harris, and Sir William Petty (all great authorities) that silver was the general money of account in England, and the measure of value in its commercial dealings with other countries. Its general adoption for such purposes was urged as a proof of its superiority as money over gold; and of this opinion are many thinkers of high authority at the present day. On the other hand it has been argued, that the metal of which the chief medium of exchange is fabricated, should have reference to the wealth and commerce of the country for which it is intended; that copper or silver coins of the lowest denominations suffice for the convenience of a very poor country; but that as a country advances in wealth its commercial transactions are more costly and require coins of corresponding value. As a matter of convenience this is undoubtedly true. Gold is the standard in England; silver is the standard in France; and the comparative facility of effecting large payments in the current coins of the two countries can admit of little doubt. Habit will familiarize the use of silver, and render a people insensible to its inconvenience; but it is certain that in England fifty sovereigns can be carried about in a man's waistcoat pocket, while in France the value of that sum in silver would weigh about 48 lbs. troy: so heavy and bulky, indeed, would it be that a carriage would be required to convey it from one part of Paris to another.

But the convenience of coin for a certain class of payments is a question quite distinct from that of its fitness for a standard of value. It is not necessary to exclude gold from the coinage because it is not adopted as the standard; it may be circulated as freely as the people desire to use it, while, instead of being the legal standard, its value may be calculated in silver. If silver be the standard, a large gold coinage may circulate at the same time for the convenience of larger payments, just as silver circulates for small payments where gold is the standard. In

either case, however, that metal which is chosen by the state as the lawful standard governs all calculations and bargains, while the other metal merely conforms to its standard, and is subsidiary to it. But even if the relative convenience of gold or silver as a standard were the sole question, it could not be determined by the modes of effecting large payments only. All payments are calculated as easily in the coins of one metal as of another, in whatever form they may be actually effected. But by far the greater number of bargains are made for articles of small value. It is in silver and copper that the consumption of all commodities is mainly paid for. The wages of the country are paid and expended in that form; and in that form the prices of nearly all the ordinary articles of daily use are calculated. However the wholesale bargains of merchants may be conducted, the goods bought and sold by them are ultimately distributed to the consumers in very small quantities, the prices of which are estimated in silver and copper. The aggregate value of the small bargains must be equal to that of the large mercantile bargains which relate to the internal trade of the country, and in frequency and number they are, beyond all comparison, more important. It is certain, also, that in the vast operations of commerce the bargains, in whatever medium they may be calculated, are very rarely paid for in any coin whatever, but are settled by various forms of credit; while all minor transactions—the bargains of daily life—can be adjusted by money payments only. It is for such purposes, therefore, that the metallic currency of a country is mainly needed; and it may be contended with much force, that silver represents the value of commodities more universally than gold, and is consequently a fitter standard.

The fitness of a standard, however, cannot be determined solely by considerations of convenience; for we must chiefly regard its intrinsic qualities as a permanent measure of value. How shall uniformity of value be maintained as far as practicable in the money of a country? is the main question to be determined; and not, Which is the most convenient form in which to make bargains? In what medium shall the whole property of the country be valued, from one year to another? By what standard shall the relative value of all things be compared? How shall fluctuations be restrained in the value of this standard itself? These are the questions to be answered.

In favour of gold as a standard it is argued that being less extensively used for plate and other manufactures, it is less an article of commerce than silver, and is confined more specifically to the purposes of money. On the other hand, it is contended that gold is used in large quantities for jewellery, watches, and decorative purposes, and that being a comparatively scarce material, its consumption, in this manner, affects its quantity and value to a greater extent than the use of plate affects the price of silver.* And in this argument there is much weight, for it is estimated that the quantity of gold compared with the quantity of silver is as 1 to 50; and their relative value is as 1 to 15. (See *Bullion Report*, 1810, *Allen's Evidence.*) Now it is evident that any variation in the commercial demand for gold must be more sensibly felt than a similar variation in the demand for silver.

But it is not sufficient to consider the demand for the precious metals as articles of consumption only; they are suddenly sought for in large quantities for other purposes. If the exchanges be unfavourable to a country, its precious metals are in greater demand for exportation than its commodities; or if there be a foreign war, its metals are in demand for the payment of the troops and for the purchase of food and munitions of war. Here again gold must feel the demand to a greater extent than silver. If metals be required for exportation in payment of goods, gold is sure to be preferred by merchants; it is compact and portable; a large value can be exported at a small cost and without difficulty; while fifteen times as much silver must be taken to effect the

* For an account of the consumption of gold and silver in various manufactures, see Jacob 'On the Precious Metals,' chap. xxvi. vol. ii. p. 270

same purpose. In war gold is even more in request than for the purposes of commerce: its facility of transport is so important that it must be obtained at any cost, and it is consequently drained from all countries in which it can be found. Thus not only is gold, from its limited quantity, more sensibly affected by any increased demand than silver; but it is more peculiarly liable to great and sudden drains from any country in which it forms the standard of value.

If it should happen that one country has a large gold coinage in circulation in addition to all the bullion which is required for the purposes of commerce, while all the adjacent countries use a silver currency, and possess very little more gold than is necessary for its consumption, it is clear that whenever a large demand for gold arises, it must be directed to the country in which there is a gold currency. That country will be immediately used by all others as a rich gold mine, whence abundance of metal without alloy, and assayed ready to their hands, may at once be grasped, without digging in the earth. No laws and no vigilance can restrain its export: as soon as it is wanted abroad, it disappears like water through a sieve. And this has been the case with England. Every other country in Europe has a silver standard; and whenever gold is wanted, her coinage supplies it. The extent to which gold is exported when the foreign exchanges are unfavourable may be estimated from the returns of bullion retained by the Bank at different periods. On the 28th February, 1824, the Bank had in its coffers 13,810,060*l.* in bullion; at the same period, in 1825, it had 8,779,100*l.*; on the 31st August in that year its treasure was reduced to 3,634,324*l.*; and on the 28th February, 1826, to 2,459,510*l.* Again in March, 1836, the bullion amounted to 8,003,400*l.*, but was reduced by the following February to 3,938,750*l.* A similar exhaustion of treasure was exhibited in 1838-9. In December, 1838, the Bank possessed 9,686,000*l.* of bullion; and in August, 1839, no more than 2,444,000*l.*

These are undoubtedly very strong objections to a gold standard, and in order to test them thoroughly it would be satisfactory to compare the actual prices of gold and silver, and estimate their relative variations. But such comparisons are extremely delusive, for there is no common standard by which to compare the price of each metal. If silver be purchased with gold, how shall we determine in which there has been variation? Or if gold and silver be both purchased alike with bank notes, there is a standard wanting; for the notes are made to conform to the value of the gold, and not to the value of the silver. These elements of uncertainty make all returns fallacious; but if reliance could be placed upon them, the fluctuations in the price of silver bullion would appear to be very slightly greater than those of gold (see *Bank Charter Report*, 1832, *Sess. Paper*, No. 722, App. p. 98; *Banks of Issue Report*, 1841, No. 410, App. p. 316). These results do not corroborate the objections to a gold standard; but it must be recollected that independently of fluctuations in the prices of bullion, a diminution in the quantity of money circulating in a country raises the value of the remainder, and disturbs its relation to the prices of other commodities. It is in this form that the effects of an abstraction of gold must be felt rather than in the price of bullion; and though its influence upon prices is very injurious, the cause is not always perceptible. If a country had a circulation composed exclusively of gold, it might sometimes be deprived of all its money; if of gold and silver conjointly, it might sometimes be deprived of all its gold; but no country could be deprived of all, or nearly all, its silver by the operations of commerce. When paper money is added to gold and silver coins as part of the circulation, a country can always command a sufficient quantity of money; but the drain of its metals has an important influence upon the value of its circulating medium, and upon the operations of commerce; but of these matters more will be said hereafter.

The principal imperfections of the precious metals as standards of value have now been adverted to. Both of them are less liable to variations than any other known commodity which could be used

for the purposes of money; but of the two, silver would appear to be, upon the whole, the most suitable for a standard of value.

But whatever metal may be chiefly used as money, there is a disadvantage attending the circulation of coins which remains to be noticed. To maintain a large circulation of them is the most expensive mode of furnishing a people with a medium of exchange. In the first place the whole value of the metals of which they are composed, is subtracted from the productive capital of the country, in order to facilitate the exchange of other commodities. Unless this expense be absolutely necessary, it is an unwise extravagance. It is as if children should play at cards with gold counters instead of ivory fish. Secondly, the wear and abrasion of coins makes it necessary to supply their deficiency with more of these costly metals, in addition to the amount already coined. Thirdly, not only are coins diminished in weight, but great numbers are irretrievably lost and destroyed. They are buried in the earth by misers, and never found again; they are lost in the sea; they are wasted by fire; they are dropped in the roads, and trampled under foot with the dust and stones. Every accident of this kind diminishes the wealth of the country, and wastes the products of its labour. Some cheaper kind of money therefore should, as far as possible, be used as a substitute for gold and silver;—and such a substitute has been found in paper.

Not only is paper more economical than gold and silver, but it is more convenient than either for effecting large payments, or for transmitting sums of money to a distance. In this respect it excels gold more than gold excels silver. A million of money may be paid in bank notes as easily as ten sovereigns, and transmitted to a distance even more easily.

But notwithstanding these advantages, paper may be deemed an imperfect instrument of exchange, because it is subject to forgery. It shares this defect, however, with other kinds of money. Gold and silver coins are counterfeited in baser metals; paper-money is imitated by the forger. But the more exquisite the art with which a coin is struck, the more difficult is it to counterfeit its impression; and, in the same manner the more elaborate the design of a promissory note, the greater will be the obstacles to forgery. No precautions, perhaps, can altogether prevent a spurious imitation of valuable articles; but the possibility of forgery can only be objected to the use of paper-money in the same manner as the danger of buying paste ornaments may be urged against the wearing of diamonds.

Paper is thus as well suited as any other material for the purposes of a currency; but its character is essentially different from that of other descriptions of money. Its cheapness, which renders its use economical, prevents it from being exchanged as an absolute equivalent for other commodities. Gold and silver have a value of their own, distinct from their value as money; but, except in its monetary character, paper is nearly worthless. To be accepted, therefore, in exchange for commodities, paper must represent some value besides its own.

In considering what that value may be, it will be convenient to describe the character and functions of a promissory note. The state, a bank, or some person of known wealth, instead of paying a sum of money in the ordinary coins of the country, issues a note promising to pay that sum, on demand, to any person who shall present it for payment. This is the form of promissory notes which circulate as money: but there are also promissory notes, payable at some particular period, which, for reasons which will be presently explained, do not form part of a monetary circulation. Now, in the ordinary transactions of life, no one will promise to pay a sum of money without receiving or expecting to receive an equivalent for it, and such equivalent, whatever it may be, is the value represented by the note. Suppose that A in London owes B at Edinburgh a thousand pounds, and that he has a thousand sovereigns to discharge his debt. Instead of transmitting the gold to Edinburgh, A takes it to the bank and exchanges it for a promissory note of that amount, which is

accepted by B in payment of his debt. In this case it is clear that the note represents a thousand sovereigns; and any person in whose possession it may be can obtain them from the bank. Suppose again that C applies to D for a loan of 1000*l.*, for the repayment of which he is able to offer security in the shape of goods or property; and that D, instead of advancing that sum in money, gives him his promissory note for 1000*l.* payable on demand. In that case, the promissory note, if issued by a solvent person, would be equally payable in coined money, but it would represent the security upon which it was given. The issuer of the note will suffer if that security be insufficient, for he has pledged his own property against it; but the interest which he expects to receive is a compensation for the risk he incurs in realizing, as it were, the property of another. A promissory note, it seems, may therefore represent either coined money or capital in any other form. But here an important question arises which affects the entire character of paper-money. Why do persons accept promissory notes instead of gold and silver? Why are they satisfied with the representative of value instead of receiving the value itself? For the explanation of this point it will be necessary to divide promissory notes into two kinds, viz.: 1, those issued by the state, or by a state bank; and 2, those issued by bankers, or other persons unconnected with the state.

1. Promissory notes issued by the state or by a state bank are under the protection of the law, and are made a legal tender. When once in circulation they discharge debts as completely as the current coin; they may not be refused in payment, although if from any cause their value be depreciated, they may be taken in exchange for a less sum than they profess to represent. Such notes are therefore money, to all intents and purposes, just as if they were composed of gold and silver. Their value is liable to fluctuation, according to the regulations under which they are issued: but they are lawful money, coined by the state in paper, instead of in the precious metals. Such money will be current throughout the country in which it is issued; but it differs from gold and silver, inasmuch as it cannot serve the purposes of an international currency. Gold and silver are current all over the world, and their value is everywhere understood; but paper-money is necessarily confined to the purposes of internal circulation.

2. Promissory notes issued by bankers or other persons unconnected with the state, not being a legal tender, may be refused in payment of any debt. They can only be circulated, therefore, with the entire concurrence of those who receive them. It is by means of banking accommodations, however, that they usually get first into circulation. A person who wishes to borrow money is not very particular concerning the form in which he obtains it, and he willingly accepts a note, if it be offered him instead of gold. He probably owes money to another to whom he, in his turn, offers the note as payment. This third party will readily accept it, for he wishes to secure the payment of the debt, and if he distrust the value of the note, he may immediately call upon the party who issued it, for gold. When the credit and solvency of a bank are well known in any neighbourhood, its notes pass from hand to hand without any distrust, but they rarely circulate beyond the adjacent district. Within its own district they are received as money, as readily as a state bank-note is received all over the country; beyond its district they are sure to be returned for gold, just as a Bank of England note would be returned from Russia. A bank of issue is also a bank of deposit, and the people amongst whom its notes are circulated pay them into the bank whence they issued, and receive credit for them—not as notes only, but as current money: and when they draw again upon their deposits, they may receive the amount in gold and silver or in state bank-notes. In this manner the distinction between local notes and other descriptions of money is gradually lost sight of; they are readily convertible: they are universally circulated: habit familiarises the use of them; and at length, without the sanction or protection of any law, they become money: usage, and not the state, has coined them. Still

any one may refuse to receive them, and the extent of their circulation depends upon the credit of the issuer. Let a whisper be heard against his solvency, and in a single day all his notes may be returned to him for immediate payment in the currency of the state.

The circumstances which occasion a large circulation of both these kinds of paper-money in a country, are the convenience of such a circulation and the difficulty of obtaining a sufficient coinage for effecting the various purposes for which money is used. The demand for money is continually increasing in proportion to the increase of commodities in quantity and value: and in a rapidly improving country no coinage can keep pace with such an increase. When paper-money is issued it does not supersede gold and silver, but is used concurrently with them. Its denominations of value are the same as those of the coins; and if it be a properly regulated currency, its value will also be precisely the same as that of the coins of a like denomination. A hundred pound note should be of precisely the same value as a hundred sovereigns. But how is this equality of value to be maintained between two descriptions of money differing so materially in character? Gold and silver, as already explained, have a known value as articles of commerce, and their real value depends upon the quantity of labour required for their production. If this continue unchanged for many years, their exchangeable value may still be liable to fluctuation by reason of varying proportions between supply and demand. The supply of them may be the same with an increased demand: or the demand may remain the same and the supply be either increased or diminished. But paper has scarcely any real value when used as money; the labour expended upon it compared with its denomination of value is merely nominal: and its value, supposing its credit to be good, must therefore depend entirely upon the proportion which the quantity issued bears to the requirements of commerce. If less be issued than there is a demand for, its value will rise; if it be issued in excess, its value will be depreciated. So strong is the operation of this principle, that promissory notes, which are a legal tender, may even be raised above the value of gold, though inconvertible into specie, if their amount be sufficiently limited. This result was actually produced, after the suspension of specie payments in 1797; when, so far from being depreciated in value, bank-notes bore a premium over gold, until they were issued in excess and fell to a discount. It is evident, therefore, that the value of paper-money is independent of convertibility. If convertible, but issued in excess, its value will be depreciated; if inconvertible, but limited in amount, its value will be sustained. And further, if government paper and local notes be concurrently in circulation, and if either be issued in excess, the value of both will be depreciated, because the aggregate quantity of paper-money will be increased beyond the demand for it.

The mode of regulating the issue of paper-money so as to sustain its value and to prevent it from fluctuation, is one of those difficult problems which have perplexed theorists and statesmen, and still remain to be completely elucidated by experience; but the principles upon which any sound system of paper-currency must be founded are now agreed upon by the best authorities.

Let it be supposed that no paper-money is in circulation but government notes, inconvertible into specie, and that it is the desire of government to maintain them at the same value as the gold and silver coinage. By what principle could the issue be regulated so as to effect this object? Gold and silver maintain a reasonable steadiness of price, as they are possessed of a real value, and being in demand all over the world, are distributed in quantities proportioned to the wants of each country. Without any standard price being fixed by the state, their value will, therefore, be self-regulated; but paper-money, not being possessed of any real value, has no element of stability in itself, and unless its issue be adjusted with the utmost nicety, its value will be constantly fluctuating. As the object to be secured is an equality of value between the precious metals and paper-

money, and as the former have an element of stability which is wanting in the latter, it is clear that paper-money must be made, in some manner, to conform to the value of the precious metals. Now this can only be accomplished by making paper-money convertible into gold or silver, whenever its holders demand such a conversion. To regulate the issues of inconvertible paper is like filling a vessel with water, in the dark, and without a measure: it is by the overflow only, that the vessel is known to be full; while a convertible paper, under proper regulation, adjusts itself to the standard of the precious metals.

If convertibility be desirable when there is no other paper in circulation but that issued by government, it is indispensable when promissory notes are permitted to be issued by other parties; for, in that case, it is necessary to guard against an excessive issue of both descriptions of paper; and when government paper is convertible, other issues of paper will in some degree conform to its standard, as it, in its turn, conforms to that of the precious metals.

The manner in which convertibility restrains the over-issue of notes may be thus explained. If too much money be in circulation, its value is depressed, and the prices of commodities relatively raised. It thus becomes more profitable to export money than commodities in payment of the price of imports; but paper-money not being current abroad, gold or silver is taken, and whenever this occurs, the exchanges are said to be unfavourable. If a state bank issuing notes be required to give gold or silver in exchange for them, it must be constantly possessed of a large store of the standard metal. If it be the sole or chief bank of issue, it will be the principal depository of bullion in the country; and thus any drain caused by unfavourable exchanges will be first and chiefly felt by it. Persons wishing to export bullion will demand it of the bank in exchange for notes. In this way the bank is apprised of the state of the foreign exchanges, and learns that money is too abundant; while it has the power of immediately contracting its circulation by means of this very demand for bullion. It has merely to lock up those notes which it has received back in exchange for bullion, and every exportation of its bullion effects a proportionate contraction of the currency and restores the exchanges to a healthy state, by adjusting the quantity of money to the requirements of commerce. This is a simple mode of regulating the circulation of a country, and if all the paper-money were issued by one body only, it could not fail to be effectual. So far as the principle has been tested in England it has been successful; but its operation has been interfered with by the competing issues of many independent banks, and by the admixture of banking business with the issue of notes, in the bank itself. Both these causes of disturbance have been partially provided against by the recent Bank Charter Act (7 & 8 Vict. s. 32), and the experience of a few years will show if there be any imperfection in the principle, that the paper-circulation of the country must be regulated by the foreign exchanges.

Any further reference to the particular laws and practice by which the circulation of this country is regulated, in connection with a complicated system of banking, will be unnecessary for the explanation of principles, and these matters have already been treated under another head. [BANK.] But we cannot quit the subject of convertibility without adverting to a point of great importance. In order to regulate the issues of paper with reference to the exchanges, it is by no means necessary that gold or silver coins should be given by the issuing body in exchange for its own notes. Uncoined bullion would serve the purpose equally well, and would occasion a considerable economy in the coinage. It would be sufficient, therefore, to require the bank, or other issuing body, to give bullion in exchange for its notes, at the standard price, whenever a certain amount should be demanded. There can be no object in giving facilities to every person who possesses a 5*l.* note, to exchange it for gold, and much mischief is caused by such facilities, in times of panic; while, on the other hand, no impediment would be offered to the great operations of commerce by raising the minimum quantity

of bullion to be demanded. By this arrangement whenever notes fell below the value of bullion, they would be brought in exchange for it, until the prices of both were again equalized; and if by any undue limitation of issue, the value of notes should be raised above that of bullion, the bank should be obliged to give its notes in exchange for bullion. In this manner the circulation would be enlarged and the equilibrium between gold and paper restored. This excellent system was proposed by the late Mr. Ricardo in his able pamphlet entitled 'Proposals for an Economical and Safe Currency,' and was carried into effect, for a short period, on the resumption of cash-payments, in 1819, but was succeeded by the present plan of convertibility into gold coin, which is more costly and less secure in its operation.

In regard to the issue of paper-money there are two antagonist theories, which remain to be noticed, although it will be impossible to enter fully into the arguments by which each is supported. By one it is proposed that all paper-money should, like gold and silver, be coined by the state alone, in order that its issue may be properly regulated and its convertibility secured. By the other it is maintained that the issue of paper-money should be open to all persons without restriction, like the drawing of bills of exchange, except in so far as securities may be necessary for the solvency of the issuers. In this country neither of these principles has been adopted singly, but the circulation has been founded upon the union of them both. It has, however, been the policy of the government gradually to contract the issues of private banks, and to replace them by the notes of the Bank of England, which, for the purposes of issue, now stands in the position of the government itself.

In considering the relative merits of a system of government issues and of free competition amongst issuing bodies, there are three main questions to be considered —1st, the profits arising from the issue of notes; 2ndly, the solvency of the issuers; 3rdly, the convertibility of the notes and the securities against over-issue. If the two first questions were the sole consideration, it would be difficult to oppose the claims of those who insist upon the right of free issue.

1. The profits arising from the circulation of paper may be regarded as one of the many forms in which profits are realized by trade. It is true that the right of issuing money has ordinarily been claimed as a royal prerogative, and that promissory notes might be included in that category. If such a claim had been made on the first introduction of paper-money, it could, undoubtedly, have been supported by the analogy which paper-money bears to a coinage; and if the law had pronounced in favour of the claim, a lucrative prerogative would have been created, instead of a profitable branch of banking. But no such claim was advanced: the issue of notes has always been distinct from the coinage of money; and the state is now no more entitled to the profits arising from a paper-circulation, than to the profits of any other description of business.

2. The solvency of the issuers of promissory notes is a matter which can be provided for by law. There are few who will question the necessity of some security, when money is permitted to be issued by private parties. It is, indeed, contended by some that a promissory note is like a bill of exchange—that it represents capital and securities, and that, in its representative character, it is circulated instead of money, upon the credit of the issuer, and upon the responsibility of those who accept it. But there is an essential difference between a promissory note and a bill of exchange. The one is money and discharges a debt; the other leaves a debt outstanding until the bill becomes due and is paid. Again, a note passes from hand to hand upon the sole credit of the issuer; a bill of exchange passes not only upon the credit of the acceptor, but also upon the credit and responsibility of each endorser. A bill is circulated amongst merchants precisely as credit is given to persons of known solvency; but a promissory note, whatever may be the solvency of its issuer, if received at all, is received as money, and is a final discharge of a debt. It is obviously just, therefore, that when the state permits so important a privilege to be exercised as

that of the issue of money, it should at the same time provide securities against its abuse. Such securities cannot be enforced without interfering, in some measure, with an unrestricted freedom of issue, but they are essential to the public safety, and should on no account be neglected.

3. But the solvency of the issuers of notes concerns those parties only, who may happen to hold the notes of a particular bank: it does not affect the whole country. If a bank fail, its creditors suffer like the creditors of any other bankrupt firm; but the general business of the country is not disturbed by its failure. On the other hand, however, the regulation of its issues has an influence upon the entire trade of the country. However effectual may be the securities against the insolvency of private banks—however complete the protection of the individual holders of their notes—the public interests are still in need of protection against the consequences of an ill-regulated currency. The securities against insolvency and the securities against over-issue are entirely distinct: the former may be complete; the latter may, at the same time, be inoperative. The mode of sustaining the value of paper-money on a par with the precious metals has already been explained. It is only by means of convertibility and by a reference to the foreign exchanges, that the issues of paper can be adjusted to the wants of the country; and this principle is incompatible with an unrestricted issue of paper by private banks.

If no control be exercised by government or by some central body, over the issues of private banks, notes will be circulated, not according to any fixed principle, nor with reference to the exchanges, but to promote the business of banking. If too many should be in circulation, the action of the foreign exchanges cannot be brought to bear upon many independent banks with sufficient force and distinctness, and the convertibility of all the paper-money in the country is consequently endangered. This is the danger which is sought to be averted by restrictions upon the issues of private banks, and by the gradual substitution of the notes of one issuing body for those of many. No interference with the business of banking would be justifiable, except for the protection of the public interests; but the evils arising from the suspension of specie payments are so great, that every practicable precaution must be taken to avert it. It deranges all commercial transactions, it injures public credit, disturbs prices, and suddenly withdraws the standard of value by which all existing obligations and all future bargains are to be adjusted. When notes are issued by one body only, a limitation of its issues, as already noticed, may sustain their value; but when many independent bodies are issuing notes, during a period of inconvertibility, there is no principle at work to regulate or to limit their issues, and it is almost certain that their notes will not only be greatly depreciated, but also will be liable to constant fluctuations of value.

There are some political reasoners who have ascribed every commercial convulsion to an ill-regulated currency; while others deny its influence upon prices and upon the general arrangements of commerce. The opinions of both these parties are probably extreme, and their facts somewhat exaggerated; but the temperate view taken by Mr. S. Jones Loyd may be adopted with less hesitation. He says, "The currency, in which all transactions are adjusted, has the same reference to the healthy state of trade, which the atmosphere in which we all live has to the physical constitution of our bodies; irregularities and disorders may arise from a variety of causes, but the duration and virulence of them will materially depend upon the pure, healthy, and well-regulated condition of the medium in which they exist. A well-managed currency cannot prevent the occurrence of periods of excitement and over-trading, nor of their necessary consequences—commercial pressure and distress; but it may tend very powerfully to diminish the frequency of their return, to restrain the suddenness of their outbreak, and to limit the extent of their mischief." (*Remarks on the Management of the Circulation*, 1840.)

As yet such promissory notes only have

been spoken of as are payable on demand: but a few remarks may be added concerning promissory notes and bills of exchange payable at some period more or less distant. These are regarded by some as paper-money, and are said to form part of the general circulation; but the essential distinction between them and paper-money has been more than once noticed above. They do not discharge obligations, but are merely written engagements to discharge them at a future period: they are one of the many forms of credit, and as such are used as substitutes for money; but they cannot be considered a part of the national currency. When transferred from one hand to another they do not pass as money, but as the transfer of a debt, of which the payment is guaranteed by each endorser in succession. It is true that they are among the most efficient agents for economising the use of money, and that they leave the circulating medium more free for other purposes, in which payments are made in notes or specie. If this were not the case the circulation of notes must be almost indefinitely increased in order to meet the various demands of commerce; but this economy in the use of money makes a comparatively small circulation sufficient. It is this circulation, however, of which the relative scarcity or abundance affects the prices of commodities and the foreign exchanges. The final settlement of a bill of exchange must be adjusted in the current money of the country. If money be dear, the acceptor exchanges more goods for it in order to meet the bill when it becomes due; if money be relatively cheap, he makes a better bargain; but the bill of exchange itself is no more money than the goods which had been originally purchased with it. Every bill of exchange when first drawn and accepted, and subsequently endorsed, represents, at each transfer, a distinct commercial transaction, of which the bill is the immediate result. The number and amount of bills of exchange in circulation cannot, therefore, be added to the currency in order to compare the aggregate circulation with the aggregate amount of commodities; for those commodities which are exchanged by means of bills may be set off against the value of other commodities represented by the bills, while the notes and specie taken together, may be compared with the aggregate of other transactions, added to the balances of accounts arising out of the final settlement of bills of exchange. It is undeniable that bills of exchange perform many of the functions of money, and they are regarded as a part of the circulation by some high authorities in monetary matters; but it appears to us that the balance of reason and of authority inclines to the other side and assigns to bills of exchange a distinct place as substitutes for currency instead of including them as part of the currency itself. (See the Evidence upon this point before the Committee on Banks of Issue, 1840.)

A similar question arises in reference to the monetary character to be assigned to banking deposits: are they currency or not? The transfer of deposits pays debts and purchases commodities; it performs the functions of money, and so far would seem to be a part of the currency and to have an influence upon prices and upon the foreign exchanges. But it cannot be contended that the whole of the deposits are currency, for a large portion of them is invested by the bankers; and if every depositor were to call for his deposits at once, they could not be paid. Nor can the uninvested portion be properly called money; it is a form of credit which, like bills of exchange, economises the use of money and is a substitute for it, but is not the thing itself. It bears so close a resemblance to currency that to assign to it a distinct character is a matter of some difficulty; but still we are disposed to class all portions of banking deposits which are not actually held by the bankers in notes and specie, in the same category with bills of exchange, book-debts, and transfers in account. All these are modes of facilitating the exchange of commodities by a refined species of barter, without the intervention of any circulating medium. Each transaction is valued in the current medium of exchange, and final settlements of accounts are adjusted in money; but the estimated value of the transaction itself cannot be reckoned as a part of the cir-

culation, for if it were, then commodities themselves would be money.

An ordinary case of barter would seem to offer a good illustration of the functions of all forms of credit as substitutes for money. Suppose a merchant, A, to have indigo to the value of 1000*l.* to sell, and that he wishes to purchase cotton of the same value, which B is willing to give in exchange for the indigo. The transfer is made at once between them: the transaction is complete without the passing of a shilling, for the indigo performs the functions of money. But can the indigo on that account be reckoned as a part of the circulating medium? Suppose again, that these merchants, at the time of the transfer, each drew a bill for 1000*l.* upon the other at three months, which each accepted. These bills would represent the value of the indigo and of the cotton; but no more money would pass between them until these bills became due, than if no part of their bargain had been committed to paper. When the bills became due, each would be indebted to the other to the same amount, and might write off one debt against the other; or each might transfer a portion of his bank-deposits to the other. In the case first supposed, no money would pass, but one commodity would be taken as an equivalent for the other. In the second case the credit of each party would be accepted as an equivalent for the goods without the intervention of a money payment: and this credit would afterwards be exchanged for another form of credit,—a bank-deposit. In neither case, as it would seem, does the transaction involve the use of any portion of the circulating medium, nor call any new description of currency into existence.

It is of the utmost importance to form a clear opinion as to the distinction between various forms of credit and the circulating medium of a country; for if they be confounded one with another, all the established theories of currency are put to confusion. All hopes of regulating and controlling the circulation must be abandoned, for its variety and magnitude would be such as to defy the operations of the government, or of a bank, by means of paper issues, which would form only one insignificant portion of the aggregate currency; and free trade in banking and free trade in the issue of notes must be recognised as the only reasonable principle for supplying commerce with a circulating medium.

We have now adverted to the main principles involved in the consideration of the character and functions of money. In treating of a subject which has been so fruitful of controversy, we have been obliged to touch lightly upon many points which to deep students of the "currency question" may seem to have deserved more consideration. To examine them fully would add volumes to the many which have already been published upon that subject; and frequent allusions to the opinions of others, however deserving of attention, would give a controversial character to an inquiry after truth. We have endeavoured to state, as concisely as we could, the opinions we have formed, together with the grounds upon which we have formed them; and those who agree with us will think us right, while they who differ from us will pronounce us wrong. Upon currency questions unanimity is nowhere to be found; but the more men seek after truth in preference to quarrelling with one another, the more certainly will truth be found at last.

(Harris, *Essay on Money and Coins*; Locke, *Considerations on Raising the Value of Money*; Sir W. Petty, *Political Anatomy of Ireland*; Hume, *Essay* III. (*Of Money*); Lord Liverpool, *On Coins*; Adam Smith, *Wealth of Nations*, vol. iv. and Note by M'Culloch; Ricardo, *Principles of Political Economy*, c. 27; *Proposals for a Safe and Economical Currency*, 1816; Jacob, *Historical Enquiry into the Production and Consumption of the Precious Metals*; *The Gemini Letters*, 8vo., 1844; *Observations on the System of Metallic Currency in this Country*, by W. Hampson Morrison; *Remarks on the Management of the Circulation in* 1839, By Samuel Jones Loyd, 1840; *Reply Thereto*, by J. R. Smith, President of the Manchester Chamber of Commerce; *Observations on the Standard of Value*, by W. Debonaire Haggard, 1840; *Reflections on the recent Pressure of the Money Market*, by D. Salomons, 1840; *Answers to Questions 'What Constitutes Currency?'*

&c., by H. C. Carey, 1840; *Report of the Manchester Chamber of Commerce*, Dec. 12th, 1839; *A Letter to Thomas Tooke, Esq.*, by Col. Torrens, 1840; *On the Causes of the Pressure of the Money Market*, by J. W. Gilbart, 1840; *The Credit System in France, Great Britain, and the United States*, by H. R. Carey, 1838; *Remarks on the Expediency of Restricting the Issue of Promissory Notes to a Single Issuing Body*, by Sir W. Clay, Bart., M.P., 1844; *A Treatise on Currency and Banking*, by C. Raguet, 1839; *Bullion Report* of 1810; *Reports of Lords and Commons*, 1819; *On the Resumption of Cash Payments; Reports on the Circulation of Notes under 5l. in Scotland and Ireland*, 1826-27; *Bank Charter Report*, 1832; *Reports on Agricultural Distress*, 1833 and 1836; *Reports on Banks of Issue*, 1840 and 1841; *Debates on the Resumption of Cash Payments*, 1819; *and on the Bank Charter Renewal Bills*, 1832 *and* 1844; Tooke, *History of Prices*.)

MONARCHY, from the Greek μοναρχία, a word compounded of μον,ος, 'alone,' and the element αρχ.ω, 'govern,' and signifying the 'government of a single person.' The word *monarchy* is properly applied to the government of a political community in which one person exercises the sovereign power. [SOVEREIGNTY.] In such cases, and in such cases alone, the government is properly styled a monarchy. Examples of monarchy, properly so called, are afforded by nearly all the Oriental governments, both in ancient and modern times, by the governments of France and Spain in the last century, and by the existing governments of Russia, Austria, Prussia, and the several States of Italy.

But since monarchs have in many cases borne the honorary title of βασιλεύς, *rex, re, roi, könig*, or *king*, and since persons so styled have, in many states not monarchical, held the highest rank in the government, and derived that rank by inheritance, governments presided over by a person bearing one of the titles just mentioned have usually been called *monarchies*.

The name *monarchy* is however incorrectly applied to a government, unless the king (or person bearing the equivalent title) possesses the entire sovereign power; as was the case with the king of Persia (whom the Greeks called 'the great king,' or simply 'the king'), and in more recent times with king Louis XIV., called by his contemporaries the *Grand Monarque*.

Now a king does not necessarily possess the entire sovereign power; in other words, he is not necessarily a monarch. Thus the king has shared the sovereign power either with a class of nobles, as in the early Greek States, or with a popular body, as in the Roman kingdom, in the feudal kingdoms of the middle ages, and in modern England, France, Holland, and Belgium. The appellation of *monarch* properly implies the possession of the entire sovereign power by the person to whom it is affixed. The title of *king*, on the other hand, does not imply that the king possesses the entire sovereign power. In a state where the king once was a monarch, the kingly office may cease to confer the undivided sovereignty; and it may even dwindle into complete insignificance, and become a merely honorary dignity, as was the case with the ἄρχων βασιλεύς at Athens, and the *rex sacrificulus* at Rome.

In Sparta there was a *double* line of hereditary kings, who shared the sovereign power with some other magistrates and an assembly of citizens. The government of Sparta has usually been termed a republic, but some ancient writers have called it monarchical, on account of its kings; and Polybius applies the same epithet to the Roman republic, on account of its two consuls. (*Philological Museum*, vol. ii., p. 49, 57.)

States which were at one time governed by kings possessing the entire sovereign power, and in which the king has subsequently been compelled to share the sovereign power with a popular body, are usually styled *mixed monarchies* or *limited monarchies*. These expressions mean that the person invested with the kingly office, having once been a monarch, is so no longer; and they may be compared with a class of expressions not unfrequent in the Greek poets, by which a privative epithet, denying a portion of the essence of the noun to which

it is prefixed, is employed for the purpose of circumscribing a metaphor. Thus Æschylus (Sept. ad Theb. 82) calls the dust the *speechless messenger of the army;* and Aristotle in his Poetic (c. 35) speaking of the same class of metaphors, says that the shield of Mars might be called his *wineless cup.* (See Blomfield's Glossary on Æsch. Ag. 81.) *Still life*, as a term in painting, is analogous to *limited monarchy*, since it denotes *dead animals;* i. e. animals which were alive, but are so no longer.

Governments are divided into *monarchies* and *republics;* and therefore all governments which are not monarchies are republics. As we have already stated, a monarchy is a government in which one person possesses the entire sovereign power; and consequently a republic is a government in which the sovereign power is shared between several persons. [REPUBLIC.] These definitions of *monarchy* and *republic* however do not agree with existing usage; according to which, the popular, though royal, governments of England and France, for example, are monarchies (viz. *mixed* or *limited* monarchies), not republics.

The popular usage of the terms in question, to which we have adverted, is mainly owing to three causes. 1. Kings not possessing the entire sovereign power have in many cases succeeded kings who did possess the entire sovereign power; in other words, kings not monarchs have in many cases succeeded kings who were monarchs. 2. Both in royal monarchies and in royal republics, the crown or regal title usually descends by inheritance. 3. Kings who are not monarchs enjoy the royal status and dignity, as much as monarchs properly so called; they intermarry only with persons of monarchical or royal blood, and refuse to intermarry with persons of an inferior degree.

Governments such as those of England and France are included by popular usage, together with republics, in the term 'free' or 'constitutional governments,' as distinguished from pure monarchies, absolute monarchies, or despotisms.

According to the existing phraseology therefore, the use of the two terms in question is as follows:—

Monarchies are of two sorts, viz. *first*, pure, absolute, or unlimited monarchies, that is, monarchies properly so called; and, *secondly*, limited, mixed, or constitutional monarchies, or monarchies improperly so called, that is, republics presided over by a king, or kingly governments where the king is not sovereign.

Republics are states in which several persons share the sovereign power, and in which the person at the head of the governing body does not bear the title of king. Accordingly, Holland with a stadtholder, Venice with a doge, and England with a protector, are called republics, not monarchies. If the head of the Venetian aristocracy had been styled king instead of doge, and if his office had descended by inheritance instead of being conferred by election, Venice would have been called a monarchy, and not a republic. The only exception to this usage of which we are aware, occurs in the case of Sparta, which is commonly called a republic, and not a monarchy, although it had hereditary kings. The reason of this exception probably is, that there being *two* lines of kings at Sparta, it was thought too gross an inaccuracy to call its government monarchical, though its government would have been called monarchical if there had been only one king, in spite of the narrow powers which that king might have possessed.

The comparative advantages of a popular or republican government and of a monarchical government have been stated, with greater or less completeness and candour, by many writers. The best statement of the advantages of monarchy (properly so called), with which we are acquainted, is in Hobbes's 'Leviathan,' part ii. c. 19.

MONK, MONACHISM, MONASTERY.

Monachism, as the term implies, properly means a solitary life; but we now usually understand by it the life of persons who are under religious vows, and live in monasteries, abbeys, or nunneries.

Monasteries (μοναστήρια) are places of residence for persons who have devoted themselves to a religious life.

The history of monasteries and nunneries in Europe, and among those nations who profess Christianity, is part of the history of Christianity, and a very important part of the history of modern Civilization. The ascetic practices of some of the early Christians were probably the origin of Monachism. Many persons renounced all the pleasures and business of life, and abstained from marriage and all sexual connection, and subjected themselves to privation and sufferings, with a view of securing eternal happiness. The founders of the first monastic communities were probably Egyptian Christians, among whom the most distinguished was Pachomius, the disciple of St. Antonius, who himself is considered to be the founder of the monastic or solitary life. After the foundation of the Egyptian monasteries, they extended to other parts of the Roman empire; and in the Eastern church they became the subject of legal regulation, by a constitution of Justinian (*Nov.* 5), addressed to Epiphanius, the archbishop of Constantinople and œcumenic patriarch, in the consulship of Belisarius, A.D. 535. By these enactments no monastery could be founded except the ground was first consecrated by the bishop within whose diocese it was, who was required to put up a cross on the spot. Persons were not permitted to assume the monastic habit till after a three years' probation, and the abbots (ἡγουμένοι) were required, during this time, to examine well into their life, conversation, and fitness for the monastic profession. On being approved, the candidates assumed the dress and tonsure. Both free persons and slaves were alike admissible into monasteries, and were received on the same footing in all respects. A master might claim and take away his slave within the three years, if he could prove that the person was his slave, and had run away for theft or any other offence; but not otherwise. Thus the monasteries became places of refuge to slaves who had severe masters, like the ancient temples. The law ordained that the monks should eat together, and should all sleep in a common dormitory, each in his own bed; but an exception was made in favour of those called anachorets and hesuchasts (ἀναχωρηταὶ καὶ ἡσυχασταί), who led a contemplative life in perfection (such is the phrase), and were allowed to have separate cells. It seems that a man could leave his monastery and enter the world again, though it was considered sinful; but as all the property which he had not disposed of before entering the monastery (subject to some provisions for his wife or children, if he had any) became the property of the monastery on his entering it, if he choose to leave it, he could not take with him or recover any part of his property. Celibacy and chastity were required of the monks, though at this time marriage was permitted to certain clerical persons, as singers and readers. Further regulations on the life of monks and nuns are contained in the 134th Novel. A monk was prohibited from entering a female monastery (for one word only is used in these laws for male and female convents), and a nun was prohibited from entering a male monastery, under any pretext whatever. Other regulations to the same general effect of ensuring chastity and the due observance of all monastic duties are prescribed by the legislator.

The institution of monachism had arrived at a state of great corruption both in the Eastern and the Western churches, when St. Benedict arose to reform it, in the latter, in the earlier part of the sixth century. It does not appear, however, that Benedict, in drawing up what is called his Regula Monachorum, or Rule, had any intention of founding a new order of monks; he writes as if he designed it for the use of all the monasteries then existing. In point of fact, from the year 530, or 532, according to others, when he established his first monastery at Monte Casino, till after the commencement of the thirteenth century, when the new mendicant orders made their appearance, the principal monasteries that were founded throughout Europe were of the Benedictine order. The Carthusians, Cistercians, Grandimontenses, Præmonstratenses, Cluniacs, &c., were all only so many varieties of Benedictines. The innovations introduced by Benedict were longest in penetrating to the more remote corners of Christendom; and perhaps in

no other part of Europe were they so long in being generally received as in the British Islands. Bede and others denominate the system which prevailed among the British monks before the arrival of St. Augustin in 597, the apostolic discipline; but it was probably merely the antient rule of Pachomius, one of the Egyptian disciples of St. Antonius. It is even disputed whether St. Augustin brought over with him the rule of St. Benedict; and at all events it is tolerably clear that that rule was not universally established in the British churches till its observance was enforced by St. Dunstan and his friend Oswald, in the reign of Edgar, after the middle of the tenth century.

In the earliest age of the monastic system, the monks were left at liberty as to many things which were afterwards regulated. St. Athanasius, in one of his epistles, speaks of bishops that fast, and monks that eat and drink; bishops that drink no wine, and monks that do; bishops that are not married, and many monks that are the fathers of children. Originally too, monks were all laymen; and, although it gradually became more and more the common practice for them to take holy orders, it was not till the year 1311 that it was made obligatory upon them to do so by Pope Clement V. Nor was any vow of celibacy or any other particular vow formally taken by the earliest monks on their admission. It appears even that it was not unusual for persons to embrace the monastic life with the intention of only continuing monks for a few years, and for those who had spent some time in a monastery actually to return to the world. We have just seen how the practice as to some of these points was at length regulated by the Imperial legislation.

The word nun, in Greek Νονὶς, in Latin *Nonna*, is said to be of Egyptian origin, and to signify a virgin. Another account is, that the original meaning of the Latin *nonna*, *nonnana*, or *nonnanis*, was a penitent. The Italians still use *nonno* and *nonna* for a grandfather and grandmother. Cyprian and Tertullian, in the latter part of the third century, make mention of virgins dedicating themselves to Christ. Some of these ecclesiastical or canonical virgins, as they were called, appear already to have formed themselves into communities, similar to those of the monks: but others continued to reside in their fathers' houses. The progress of female monachism however, from the rudeness and laxity of the first form of the institution, to the strict regulation which characterized its maturity, moved on side by side with that of male monachism.

Monasteries are called by the Greek fathers not only Μοναστήρια and Μονεαὶ, but also sometimes σεμνεῖα, that is, holy places: ἡγουμενεῖα, the residences of the abbots, styled ἡγουμένοι, or chiefs; μάνδραι, inclosures; and φροντιστήρια, places of reflection or meditation, that being one of the purposes to which they were very early applied. For a general account of the different sorts of religious houses, and of their government, and the habits and other peculiarities of the principal orders of monks and nuns, the reader is referred to the works mentioned at the end of this article. The three vows of Chastity, Poverty, and Obedience are taken by all monks and nuns at their admission. All, both male and female, likewise receive the tonsure, like all the ecclesiastics of the Romish church. In all the orders the candidate for admission must first undergo a novitiate, which varies from one to three years. The age at which novices may make profession differs in different countries; but the rule laid down by the council of Trent only requires that the party, whether male or female, should be sixteen. In the modern constitution of monachism, the vows and status of a professed person, as indeed of all ecclesiastics, are by the law of the Roman church for life and indelible.

The greatest revolution by which the history of monachism has been marked since the establishment of the rule of St. Benedict, was the rise, in the beginning of the thirteenth century, of the Mendicant Friars.

The general dissolution of monastic establishments was one of the first consequences of the Reformation in our own and all other countries that separated from the Romish church. There are however a few Protestant monastic establishments

in some parts of Germany. Even in some Roman Catholic countries, especially in Germany and France, the number of these establishments has been greatly reduced within the present century and the latter part of the eighteenth century, and the wealth and power of those that still exist most materially curtailed. The reform of the German monasteries was begun by the Emperor Joseph II.: those of France were all swept away at the commencement of the Revolution; but some of them were set up again, though with diminished splendour, after the restoration of the Bourbons. Since the relaxation of the penal laws, several Roman Catholic nunneries have been erected in England and Scotland, as well as in Ireland. (As to the present statutes on the subject, see LAW, CRIMINAL, p. 203.) Monks and nuns of all descriptions still swarm in Italy, and in the countries of South America lately subject to the Spanish and Portuguese crowns: in Spain and Portugal all monasteries have been suppressed within these few years. Even in modern times we still hear occasionally of the institution of a new order of monks. One, called the Congregation of the Blessed Virgin Mary, was established by the late Pope Leo XII. in 1826. The most important new order of monks, founded in the Roman Catholic church since the first outbreak of the Reformation, is that of the Jesuits.

If we would rightly appreciate all the effects of monachism, good and bad, we must travel through the history of eighteen centuries. It must be admitted, that the institution for a long time produced some benefit. In the present condition of Europe the strict rules of monachism are perhaps purely a social evil. The institution is, in its complete form, inconsistent with Protestantism. But whatever prejudice there may be against monachism, there appears to be no well founded objection to persons voluntarily entering any religious societies where they can live in quiet and retire from the world, provided they may quit such societies when they please. But if such societies should ever be revived in Great Britain to any extent, it will be necessary to provide for their visitation in order to prevent persons being detained there against their will; and it will be necessary to regulate their establishment and administration by general rules. All associations of individuals, and especially those of a religious character, are greedy of acquiring property; and fraud will be used for this purpose, as the history of religious societies shows. The restrictions at present placed on the acquisition of property in England by corporate bodies, are to a certain extent useful and necessary, even when these bodies are not religious or ecclesiastical. But in all states where freedom of opinion is established, and religious and ecclesiastical matters are regulated by the same power which regulates matters not religious and ecclesiastical, it is essential to the conservation of true political liberty to keep within strict limits all associations, religious and ecclesiastical, and to limit their acquisition of property. In those countries where monachism still retains its original character, the institution must be destroyed before political liberty [LIBERTY] can exist.

(Among the most important works on the subject of monachism are the following: 'Nebridii a Mundelheim Antiquarium Monasticum,' fol. Vien., 1650; 'Philippi Bonanni Ordinum Religiosorum Catalogus,' 3 vols. 4to., Rom. 1706-8; 'Histoire des Ordres Monastiques Religieux et Militaires,' par le Père Hippolyte Hélyot,' Par., 8 vols. 4to., 1714, &c.; and nov. edit. 1792; Crome's 'Pragmat. Geschichte der vornehmsten Mönchsorden,' 10 vols. Leipz., 1774-83; Tanner's 'Notitia Monastica,' fol. 1744; Dugdale's 'Monasticon,' new edit. by Cayley and Ellis, 6 vols. fol., 1812-30; Fosbrooke's 'British Monachism,' 2 vols. 8vo., 1802. See also Thomasin, 'Discipline de l'Eglise,' tom. i; Bingham's 'Antiquities of the Christian Church,' book vii.; and Gibbon's 'Decline and Fall of the Roman Empire,' chap. 37.)

Monk. (From the Greek μοναχός, 'Solitary,' or 'one who leads a solitary life,' *Monachus*, in church Latin). In England, before the Reformation, a person who 'entered and professed in religion,' as the phrase was, from that time

was considered, for all legal purposes, to be dead. Littleton (§ 200) says, "When a man entereth into religion and is professed, he is dead in the law, and his son or next cousin (consanguineus) incontinent shall inherit him, as well as though he were dead indeed. And when he entereth into religion, he may make his testament and his executors; and they may have an action of debt due to him before his entry into religion, or any other action that executors may have, as if he were dead indeed. And if that he make no executors when he entereth into religion, then the ordinary may commit the administration of his goods to others, as if he were dead indeed." It was a consequence of this legal notion of a civil death, that if a lease was made to a man for the life of another person, and this other person professed in religion, the lease determined; and for this reason such a lease was always made for the *natural* life of any person on the continuance of whose life the lease was to depend; and this phraseology is still maintained in legal instruments. (Co. 2, *Rep.* 48.)

All Regulars, that is, those who vowed obedience, chastity, and poverty, entered some house of religion, where they professed. Bare admittance into such a house was an entry into religion; but the person was not professed till the year of probation was expired, and he had taken the habit of his order and made the vows above mentioned.

By the 27 Hen. VIII. c. 28, all monasteries, priories, and other religious houses of monks, canons, and nuns, of whatever habit, rule, or order, not having lands, rents, or other hereditaments above the value of 200*l.* per annum, and all their manors and lands, were given to the king and his heirs for ever. The act declared that the king should have and enjoy, according to the act, the actual and real possession of such religious houses as were comprehended within it, and might give, grant, or dispose of them at his will and pleasure, to the honour of God and the wealth of the realm. The act of the 31st Henry VIII. c. 13, was still more comprehensive. By the 1st Ed. VI. c. 14 (which recites the 37th Henry VIII. c. 4), all colleges, free chapels, and chantries, and all manors, lands, or hereditaments belonging to them, or which had been given or assigned to the finding of any priest, or of any anniversary or obit, or any light or lamp, to have continuance for ever, were given to the king and his heirs and successors.

It should be observed that these acts did not affect ecclesiastical bodies or persons, simply as such; that is, they did not affect the secular clergy, such as archbishops, bishops, deans and chapters, prebendaries, archdeacons, parsons, and vicars; but only the regular clergy. It was decided in the archbishop of Canterbury's case (Co. 2, *Rep.* 48), that no ecclesiastical house, unless it was also religious, was within the act of 31 Henry VIII. These acts however completely put an end to all the houses of regular clergy within the realm; and on the occasion of carrying into effect the statute of Edward VI., a great many grammar-schools and other charities which did not come within the provisions of the act were also suppressed. "This act," says Strype, "was soon after grossly abused, as the act in the former king's reign for dissolving religious houses was. For though the public good was pretended thereby (and intended too, I hope) yet private men, in truth, had most of the benefit, and the king and commonwealth, the state of learning, and the condition of the poor, left as they were before or worse." (Strype's *Ecclesiastical Memoirs*, ii. 101-103, 423, and iii. 461, where there is a catalogue of King Edward's free grammar-schools, which were endowed for the most part out of the charity lands given to the king by the said act for this and other like purposes.)

The existing laws against members of religious orders or societies of the Church of Rome are stated in LAW, CRIMINAL, p. 203.

MONO'POLY, from the Greek *monopólia* (μονοπωλία), which occurs in Aristotle's *Politick* (i. 11), where it is used simply in the sense of a man buying up the whole of a commodity so as to be the sole holder of it, and to have the power of selling it at his own price. When the word monopolium was used by Ti-

berius in addressing the Roman senate (Suet. *Tib.*, c. 71), he thought an apology necessary for introducing a new word. The word however soon came into common use. The term monopoly, which literally signifies *single* or *sole selling*, is used in a constitution of Zeno (*Cod.*, iv. 59) in the sense in which it is used by Aristotle, and in the sense of what our law understands by forestalling, engrossing, regrating; to which we may add combining to keep up prices. [FORESTALLING.] Zeno declares that no person shall exercise a monopoly of clothing, fish, or any other thing adapted for food or use. He gives no definition of monopoly. The term however must be explained from the context, from which it appears to signify any means by which a person gets or attempts to get the whole of any commodity into his possession for the purpose of enhancing the price. In the same Constitution he forbids all combination among dealers to raise the prices of any commodity. Zeno's punishment for monopoly was confiscation of the goods of the offender and perpetual exile.

A monopoly, according to the English law, is defined by Coke (3 *Inst.* 181, c. 85, 'Against Monopolists,' &c.) to be "an institution or allowance by the king, by his grant, commission, or otherwise, to any person or persons, bodies politic or corporate, of or for the sole buying, selling, making, working or using of any thing, whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade." In *Le Case de Monopolies* (11 *Co.*, 86, *b*) it is said that every monopoly has three inseparable incidents—the raising of the price, the deterioration of the commodity, and the impoverishment of artificers and others. It appears that these inseparable incidents were considered as tests by which a grant savouring of monopoly might be tried.

Every royal grant or letters patent tending to a monopoly as thus defined and explained was void. The crown however could by letters patent grant and create exclusive privileges of buying and selling when such grant was of general use, or when the grant was to an individual who had introduced into the country something new and useful. This prerogative of the crown was often abused, and by none more than by Elizabeth, who granted many patents of monopolies for the purpose of raising money. As an instance of this, Elizabeth had granted to a certain person the sole making, importing, and selling of playing cards, which grant was declared void by the judges. (*Le Case de Monopolies.*)

It seems then that the word monopoly was never used in English law, except when there was a royal grant authorising some one or more persons only to deal in or sell a certain commodity or article.

By the act of 21 Jac. I., c. 3, all monopolies and all commissions, grants, licences, charters, and letters patent to any person or body politic or corporate, of or for the sole buying, selling, making, working, or using of anything, or of any other monopolies, &c., are declared contrary to the laws of the realm and utterly void and of none effect.

By the sixth section of the same statute the above provisions do not extend to letters patent and grants of privilege thereafter to be granted for fourteen years or under, of the sole working or making of any new manufacture to the true and first inventor thereof, which others at the time of making such letters patent and grants shall not use, so as also such letters patent be not contrary to the law, or mischievous to the state, or generally inconvenient. This section is the foundation of the present law as to patents for inventions. [PATENTS.]

Copyright and patents are now generally placed among monopolies by legal writers, but not correctly. The original legal sense of the term monopoly has been already explained; and the power of the crown to grant patents is now limited and defined, as well as the several formalities to be observed in obtaining them. Any patent not obtained in due form is void; and the term monopoly, as above explained, has legally ceased to exist.

There is still a vulgar and common use of the term monopoly which is incorrect, inasmuch as it has not the sense which monopoly had.

If a number of individuals were to unite for the purpose of producing any particular article or commodity, and if they should succeed in selling such article very extensively, and almost solely, such individuals in popular language would be said to have a monopoly. Now, as these individuals have no advantages given them by the law over other persons, it is clear they can only sell more of their commodity than other persons by producing the commodity cheaper and better. Such so-called monopoly then is neither the old legal monopoly, nor does it rest on any legal privilege. There would however be no objection to calling it a monopoly in the antient sense of that term, if the word were not now used in a bad or unfavourable sense, which probably dates from the time when real monopolies were granted by the crown, and were very injurious to the nation. Between a monopoly as it once existed, and a monopoly as it is now vulgarly understood, there is this difference—the former was only derived from a grant of the crown, and was often injurious to all persons except the patentee; that which is now vulgarly called a monopoly is nothing more than the power which an individual or a set of individuals acquire, by means of capital and skill, of offering something to everybody cheaper and better than they had it before, and it is therefore an advantage both to the so-called monopolists and to everybody else. The abusive application of the term at present is founded on the jealousy which people of small capital feel towards those who have large capital and carry on a successful business.

The case of a number of persons combining to produce and sell, or to buy and sell, a thing, has been taken, as being one which is the most striking and oppressive kind of monopoly, in the vulgar sense of that term. An individual however may, in this sense, become a monopolist: as if a man should buy up all the tallow in Russia, and so make candles as dear as he pleased, or rather as dear as he could, for his price must be limited in a measure by people's ability to buy; or (to take a case which would appear a still greater act of monopoly, as being more sensibly felt) as if a man should buy all the corn in a country, and so make bread as dear as he could. Without discussing the question as to the advantages and disadvantages to a nation of this kind of monopoly, it is enough to put it upon those who disapprove of such wholesale buying, to say how far, and to what amount, they will allow a man to use his capital and exercise his commercial skill; for it is incumbent on those who would deprive a man of such liberty to say exactly how far such liberty should go.* Further, if such persons wish to be exact in their language, they should use another word than monopoly, which had once a particular meaning, as above explained, and signified a different thing from that which they call a monopoly. And if they will apply this word monopoly to a person or persons who, by industry and skill, and the judicious employment of capital, make and sell or buy and sell much more of a thing than anybody else, they should consider whether—inasmuch as buying and selling are free to all, and as all people wish to buy as cheap as they can and as good as they can—they will apply this word in an invidious sense to any person or persons who can only command customers because the customers like to go to them, or because the customers can get the thing nowhere else, owing to no other persons having provided themselves with the commodity for sale.

A new kind of monopoly, as it would be called according to the incorrect use of the term monopoly, is growing up in England. The Parliament empowers a number of individuals to make railroads from one place to another, and for that purpose to take what land and other private property is required for the purposes of the railway. The greater cheapness and convenience of railway carriage put an end to other modes of conveyance to a certain extent; but only because the railway travelling is cheaper and more convenient. Still it is possible that a railway company might raise prices so high, after they had driven all other competitors from the

* At Athens there was a law which limited the amount of corn that a man could buy. (Lysias, κατὰ τῶν σιτοπωλῶν.) [CORN TRADE, ANTIENT.]

roads, as to deprive the public of some of the advantages of railway conveyance, though they might also deprive themselves of some profit. For it is not easy to revive other modes of conveyance after they have been disused, and nobody would like to venture on the attempt to revive them, because the enterprise might fail by the company again lowering their charges, simply to destroy competition, and then raising them again. Also, when a railway between two places is established, the Parliament, as a general rule, would not empower another association to make another railroad between the same two places, and in the same or nearly the same line, and so they would in effect have given a kind of monopoly or exclusive privilege to the original company. These are not reasons against the granting of railway privileges, but they are reasons for the legislature regulating the conduct of railway companies by general rules, whenever the public interest shall require such regulation.

If the government of any country lay a tax on any imported article, such a tax creates what may be called a monopoly in favour of those who produce the article at home. Such tax "raises the price, deteriorates the commodity, and impoverishes artificers and others." It is not however a monopoly in the technical sense, because it is not a grant from the Crown, but is imposed by a law. It is a great deal worse however for the community than a real monopoly, for a real monopoly is illegal and may be got rid of by legal means.

That kind of monopoly or sole-selling or dealing which is given by the law of copyright, and by patents, is in effect a kind of property created by law for the benefit of an author or inventor, and which he could not effectually acquire or secure without the aid of the law. It is not however a monopoly in any sense in which that term has ever been used. Whether it is profitable or injurious to the community is a question that concerns legislation. [COPYRIGHT.]

MONT DE PIE'TE' (MONTE DI PIETA', in Italian), a benevolent institution which originated in Italy in the fifteenth century, the object of which was to lend money to necessitous people at a moderate interest. The Jews, who were the great money-lenders in that age, exacted an enormous interest, and as much as 20*l.* to 25*l.* per cent. The papal government and other Italian governments established a kind of bank, which lent money upon pledges, for a fixed term, at a low rate of interest, intended chiefly to defray the unavoidable expenses of the establishment; at the expiration of which term, if the capital lent and interest were not repaid, the pledges were sold, and the surplus money, after paying the debt incurred, was restored to the owners. In most instances, however, the term might be renewed by merely paying the interest. The difference between these establishments and those of the ordinary pawnbrokers seems to have been that they were intended mainly for the benefit of the borrowers, and not for the profit of the lenders, and that every reasonable facility was afforded to the former. The administration of the Monte di Pietà was therefore conducted upon economical and strictly equitable principles, and it was under the inspection of the government as a public benevolent institution. This at least was the original principle, although it may occasionally have been deviated from in after-times, in consequence of the cupidity or necessities of the governments themselves. In times when capital was more scarce or less generally diffused than it is now, and when loans of money were difficult to be got, the Monte di Pietà was a most useful institution. Leo X., some say Paul III., sanctioned the first establishment of a Monte di Pietà at Rome, which was under the direction of a society of wealthy persons, who, having contributed the necessary funds, lent upon pledges small sums not exceeding thirty Roman scudi, a little more than six pounds sterling, to each person. The money was lent for a term of eighteen months. The establishment was under the inspection of the treasurer of the Apostolic Chamber. Large storehouses were annexed to the office, which stood in the district della Regola, near the banks of the Tiber. (Richard, *Description de l' Italie*, vol. v.) Other establishments of a similar nature existed at

Milan, Florence, Naples, and most other towns of Italy. That of Padua is one of the oldest on record, having been established in 1491, when the Jewish banks, which lent at usurious interest, were shut up. (Scardeoni, *De Antiquitate Urbis Patavii.*)

This institution was introduced into other countries, especially into the Netherlands, and Monts de Piété were established at Brussels, Antwerp, Ghent, and other places. In Spain there were also similar establishments at Madrid and some other large towns, but in no country were they so generally spread as in Italy, the original country of benevolent institutions during the middle ages.

When the French under Bonaparte invaded Italy in 1796–7, they plundered the Monti di Pietà of Milan, Modena, Parma, and most other towns. At Rome, Pope Pius VI., being pressed by the French to pay an enormous sum for war contributions, was obliged to seize upon the richer pledges in the Monte di Pietà, for the repayment of which he gave bonds; but these bonds lost all value in the subsequent invasion of Rome by the French in 1798. The Monti di Pietà have been re-established in most Italian cities.

The Monti Frumentarii, in several parts of Italy, are storehouses of corn, which is lent to poor cultivators on the same principle as money is by the Monti di Pietà.

MORTGAGE. A general notion of a mortgage may be collected from the following passage in Littleton (§ 332), who treats of Mortgages, as then in use, under the general head of estates upon condition.

"If a feoffment be made upon such condition, that if the feoffor pay to the feoffee, at a certain day, 40*l.* of money, that then the feoffor may re-enter, &c.,—in this case the feoffee is called tenant in mortgage, which is as much to say, in French, as *mortgage;* and in Latin, *mortuum vadium.* And it seemeth that the cause why it is called mortgage is, for that it is doubtful whether the feoffor will pay, at the day limited, such sum or not: and if he doth not pay, then the land, which is put in pledge upon condition for the payment of the money, is taken from him for ever, and so dead to him, upon condition, &c. And if he doth pay the money, then the pledge is dead as to the tenant," &c.

The money thus agreed to be paid by the feoffor must be supposed to be money borrowed from the feoffee, or the amount of a debt due from the feoffor to the feoffee, though Littleton does not expressly say so. According to the terms of this contract, if the feoffor, or the feoffor's heir did not pay the money at the time appointed, the land became the absolute property of the feoffee.

The mortuum vadium of Glanville (book x.) is evidently a different thing from the mortuum vadium of Littleton, and Glanville's explanation of the term seems more applicable to his mortuum vadium, than Littleton's is to the mortgage which he describes. "When an immovable thing," says Glanville, "is put into pledge, and seisin of it has been delivered to the creditor for a definite term, it has either been agreed between the creditor and debtor that the proceeds and rents shall in the meantime reduce the debt, or that they shall in no measure be so applied. The former agreement is just and binding; the other unjust and dishonest, and is that called a mortgage, but this is not prohibited by the king's court, although it considers such a pledge as a species of usury." (Beames' *Transl.*)

Littleton describes the old and strict law of mortgage; but the courts of equity gradually introduced such modifications as to convert a mortgage from its ancient simplicity into a very artificial and complicated arrangement. A mortgage is a contract, and therefore requires two persons at least, one of whom borrows and the other lends money. The borrower is the owner of land, or has some interest in land, which he conveys or transfers as a security to the lender of the money; the borrower is called the mortgagor, and the lender is called the mortgagee. The whole transaction is properly termed a mortgage; but the name is sometimes applied simply to the debt.

The mortgage deed varies in its terms according to the estate or interest in the lands which the mortgagor conveys to the mortgagee, and according to the spe-

cial agreement of the parties. By the execution of the deed, the estate of the mortgagor in the lands mortgaged is conditionally transferred to the mortgagee, but the mortgagor's estate is not forfeited till he makes default in payment of the money borrowed and interest at the time named in the deed. The money borrowed is however seldom paid at the time agreed on, the consequence of which is that the mortgagor's estate is forfeited by his not fulfilling the condition, and the mortgagee becomes the absolute legal owner of the land, or of such estate in it as was conveyed to him. He can then bring an action of ejectment against the mortgagor, if the mortgagor is in possession of the land, without giving him notice; and he can do this even before default in payment, unless it is agreed by the mortgage-deed that the mortgagor shall remain in possession till he makes default, and a clause to this effect is commonly inserted in the deed.

From the time of default being made, the several interests of the mortgagor and the mortgagee in the land must be considered as chiefly belonging to the jurisdiction of equity. When the mortgagee, by default of the mortgagor, has become the absolute legal owner of the lands, the mortgagor possesses what is called the equity of redemption. This equity of redemption is considered by courts of equity as an estate in the land; it may be devised by the mortgagor, and, in case of his intestacy, it will descend to his heir; it may be sold, or it may be mortgaged; it is subject both to dower (in equity, by 3 & 4 Wm. IV. c. 105) and curtesy; and it may be settled like a legal estate.

By a recent statute (1 Vic. c. 28), made for the purpose of explaining the statute of limitations (3 & 4 Wm. IV. c. 27), it is enacted, That any person entitled to or claiming under any mortgage of land (as defined by the last-mentioned act) may make an entry or bring an action at law or suit in equity to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twenty years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued. This act was passed to protect the mortgagee who allows the mortgagor to continue in possession of the land or in the receipt of the rents and profits; and it secures to him his rights for twenty years after the last payment of principal or interest by the mortgagor. By the 3 & 4 Wm. IV. c. 27, when a mortgagee has got possession of the land or receipt of the profits, the mortgagor, or the person claiming through him, can only bring a suit to redeem the lands within twenty years next after the commencement of such possession or receipt, or within twenty years from the time when the mortgagee or the person claiming through him last acknowledged in writing to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, his title of mortgagor or right to redemption. The mortgagor, or the person claiming under him, may therefore, at any time within the limits above named, tender to the mortgagee his principal money and interest, and claim a reconveyance of the lands; and if the mortgagee will not accept the tender and reconvey, the mortgagor may compel him by filing a bill in equity for the redemption of his lands.

A mortgagee can transfer his mortgage to another. The transfer or assignment, as it is generally called, consists of two parts expressed in one deed, the transfer of the debt, and the conveyance of the land, which is the security for the debt. If the mortgagor is not a party to the assignment, the assignee takes the mortgage exactly on the terms on which the assignor held it at the time of the assignment. If therefore the mortgagor should happen to have paid the whole or any part of the debt, the assignee, in coming to a settlement with him, must submit to allow such payment in diminution of the original debt which the assignor affected to assign to him.

Though the mortgagee, after the mortgagor's default in payment of the principal money and interest, has the absolute legal estate, he is still considered by courts of equity only to hold it as a security for his debt. The legal estate in the land will descend to the mortgagee's heir, or will

pass by his will, if duly executed; but the heir or devisee takes only the legal estate in the land, and the money or debt (as a general rule) belongs to the mortgagee's administrator or executor.

If the principal money and interest are not paid at the time agreed on, the mortgagee may file a bill of foreclosure against the mortgagor. By such bill the mortgagee calls on the mortgagor to redeem his estate forthwith, by payment of the principal money, interest, and costs; and if the mortgagor does not do this within the time named by the decree of the court (which is generally within six months after the master in chancery has made his report of what is due for principal, interest, and costs), he is for ever foreclosed and barred of his equity of redemption, and the mortgagee becomes the owner of the land in equity, as he was before at law. If the money is paid at the time named, the mortgagee must reconvey the land, and deliver up to the mortgagor all the deeds and writings in his possession relating to the land.

When the mortgagor has mortgaged his equity of redemptiom (which he may do as often as he pleases), every new mortgagee has his claim on the land as a security for his debt, according to the order in which his mortgage stands. This is the general rule; but it is subject to various exceptions, which depend on particular circumstances. Thus a mortgagee of the equity of redemption will be postponed, as to his security, to a subsequent mortgagee who has advanced his money without notice of the prior mortgage, if such subsequent mortgagee should be able to obtain the legal estate.

If a second mortgagee obtains the title-deeds of the estate, this will not give him a preference over a prior legal mortgagee, unless the prior mortgagee has parted with or failed to get possession of the title-deeds for fraudulent purposes, or through gross negligence. But though the second mortgagee has no priority, when there is neither fraud nor negligence, he will not be compelled to give up the title-deeds to the first mortgagee, unless the first mortgagee pays him his debt and interest.

A legal mortgage is effected by an instrument which transfers the legal estate. When a mortgagor makes a second mortgage, and uses the form of a legal conveyance, this also is called a legal mortgage, though there is no transfer of any legal estate, for the legal estate is already conveyed to another person. This kind of mortgage may be called a mortgage of an equity of redemption, by way of distinguishing it from the equitable mortgage next mentioned. An agreement in writing to transfer an estate as a security for the repayment of a sum of money, is called an equitable mortgage, because it gives the intended mortgagee a right to have a legal mortgage, and in a court of equity gives him in fact all the rights of a legal mortgagee. A deposit of the title-deeds of an estate, or of the copy of court roll, as a security for a debt contracted at the time of the deposit, or previously to the deposit, constitutes an equitable mortgage. An equitable mortgagee by deposit of title-deeds, has a preference over a subsequent purchaser or mortgagee who obtains the legal estate with notice of the equitable mortgage.

If the mortgagor is not seised in fee, but has only a limited interest in land, as a lease for years, the mortgagor, by taking an assignment of the lease, becomes liable for the rent, and to the covenants contained in the lease, though he has never taken possession of the premises included in it. The same rule was for a time held to apply to an equitable mortgagee by deposit of title-deeds; but in a very recent case it has been decided that the equitable mortgagee is not liable to such covenants (*Moore* v. *Choat*, 8 Sim., 508): and so the matter stands at present.

The preceding remarks apply to mortgages of land only, in which there are many peculiarities which arise from the condition of legal ownership of land in this country. But other kinds of property may be mortgaged, such as chattels personal, a life-interest in a sum of money, or a policy of insurance, or a ship, or shares in a ship. The subject of pawning or pledging of goods is treated under PLEDGE, and also the rules of the Roman law as to Hypotheca and Pignus. The equitable lien on land, which is classed among mortgages by some writers, is

briefly noticed under LIEN; and mortgages of ships under SHIP.

The English law of mortgage has been chiefly formed by the decisions of courts of equity, and it now forms a very important and often complicated part of the law of property and contracts. As it is a matter of general interest that every reasonable facility should be given to the sale of property, so it is equally a matter of general interest that the means of borrowing money upon the security of property should be rendered easy, and the rules of law relating thereto as clear and certain as the nature of the transaction will allow. The borrowing and lending of money upon good security is one of the most direct means of rendering capital productive. Those who lend receive the value of their money in the shape of interest, and those who borrow are enabled to employ their industry, fixed or moveable capital and skill, more effectually than they could without this aid. Though the amount of mortgage transactions is very great, they might be still further increased if those who are the cultivators of land had such an interest in it as would enable them, either alone or in conjunction with their landlords, to borrow money for the improvement of land. But this cannot be done prudently either on the part of the lender or the borrower, so long as farms are let on the present terms. The introduction of a good system of leasing would certainly be followed by increased application of capital to land, which in many cases can only be done by borrowing on the security of the land. [LEASE.] There is an act 3 & 4 Vict. c. 55 (altered and amended by 8 & 9 Vict. c. 56), which is "to enable the owners of settled estates to defray the expense of draining the same by way of mortgage." These acts apply to England and Ireland.

MORTMAIN. By the 9 H. III. c. 36 (Magna Charta), it was declared that it should not be lawful for the future for any person to give his land to a religious house, so as to take it back again and hold it of the house; and any such gift to a religious house was declared to be void, and the land was forfeited to the lord of the fee. The reason of this provision is obvious, if we consider the nature of the feudal tenure; and indeed it is distinctly expressed in the preamble of the statute of the 7 Edward I., sometimes entitled 'De Religiosis,' as follows: "Whereas of late it was provided that religious men should not enter into the fees of any without the licence and consent of the chief lords (capitalium dominorum) of whom such fees are immediately held; and whereas religious men have entered as well into fees of their own as those of others, by appropriating them to their own use and buying them, and sometimes receiving them of the gifts of others, by which means the services due from such fees, and which were originally provided for the defence of the realm, are unduly withdrawn, and the chief lords lose their escheats of the same," &c. The statute then forbids any religious person or any other to buy or sell lands or tenements, or under colour of a gift or term of years, or any other title whatever, presume to receive from any one, or by any other means, art, or contrivance, to appropriate to himself lands or tenements, so that such lands and tenements come into mortmain in any way (ad manum mortuam deveniant), under pain and forfeiture of the same. The statute then provides, that if it is violated, the lord of whom the lands are holden may enter within a year; or, if he neglect to enter, the next lord may enter within half a year; and if all the chief lords of such fees, being of full age, within the four seas, and out of prison, neglect to enter, the king may enter.

The general notion of mortmain may be collected from the words of this statute, the term being used to express lands belonging to any corporate body, ecclesical, or sole or aggregate. Various explanations have been offered as to the reason why lands of this description were said to be in mortmain, or in mortua manu, that is, in a dead hand. Under the feudal system, lands held by any corporate body or person might not inappropriately be said to be in a dead hand as to the lord of the fee; for as a corporation has perpetual continuance and succession, the lord lost the profits in his lands which, under the strict system of tenures, he derived either from the services of the

tenant, while alive, or from the death of the tenant and other circumstances. Accordingly, the best explanation of the meaning of this term seems to be that offered by Coke, that "the lands were said to come to dead hands as to the lords, for that by alienation in mortmain they lost wholly their escheats, and in effect their knights' services for the defence of the realm, wards, marriages, reliefs, and the like, and therefore was called a dead hand, for that a dead hand yieldeth no service." Similarly, the old mortuum vadium seems to have been so called, because the land in pledge was, for the time, dead to the pledger. [MORTGAGE.]

Before the 9th Hen. III. c. 36, was passed, a man might give or sell his lands to religious as well as any other persons, unless it was forbidden in the gift of the lands to himself; and accordingly, the great lords, on making a grant of land, used to insert a clause preventing the sale or gift to religious persons and also to Jews: Licitum sit donatorio rem datam dare vel vendere cui voluerit, exceptis viris religiosis et Judeis. (Bracton, fol. 13.)*

This statute of Edward I. prevented gifts and alienations between corporate bodies or persons and others, but it was eluded by a new device, apparently invented by the clergy, and probably most used by the religious houses. These bodies, pretending a title to the land which they wished to acquire, brought an action for it by a Præcipe quod reddat against the tenant, who collusively made default, upon which the religious house had judgment, and entered on the land.

The statute of the 13 Edward I. (Westminster, 2), c. 32, provided against these recovery of lands obtained by collusion; for it was enacted, that after the default made, it should be inquired whether the demandant had any right in his demand or not; and if the demandant were found to have no right, the land was declared to be forfeited to the lords mediate and immediate, similarly as was provided by the previous statute of Edward I. Another provision of this statute (c. 33) furnishes curious evidence as to the devices practised for the purpose of eluding the statutes of mortmain. The words of the enactment will best explain the allusion:—"Forasmuch as many tenants set up crosses, or permit them to be set up on their tenements, to the prejudice of their lords, in order that the tenants may defend themselves by the privileges of Templars and Hospitallers against the chief lords of the fees, it is enacted, that such tenements be forfeited to the chief lords, or to the king, in the same way in which it is enacted elsewhere with respect to tenements alienated in mortmain" (de tenementis alienatis ad mortuam manum).

Various other statutes were passed in the reign of Edward I. and Edward III. relating to mortmain; but the next important statute is that of the 15 Richard II. c. 5. As corporations could not now acquire lands by purchase, gift, lease, or recovery, they had contrived another new device, said to be mainly the invention of, or mainly practised by, ecclesiastical bodies or persons. The device consisted in this: the lands in question were conveyed to some person and his heirs to the use of the ecclesiastical body or person and their or his successors. In this way the legal estate was not in the possession of those who could not legally hold it, but in a person who had such legal capacity; and the use or profit of the land, the beneficial interest in it, was secured to the ecclesiastical body or person, contrary to the spirit of the previous statutes, though not contrary to their expressed provisions. The statute of Richard, after declaring that this use was also mortmain, further declared all such conveyances to be void, and that the lords might enter on lands so conveyed, in the manner provided for by the statute De Religiosis. This distinction of the ownership of land into the legal and beneficial, was undoubtedly derived by the clergy from the like distinction in the Roman law between Quiritarian and Bonitarian ownership, which is briefly and distinctly explained by Gaius (ii. 40).

Though the statute De Religiosis was in its terms comprehensive enough to in-

* Viner (art. 'Mortmain'), quoting Coke, who writes this passage "Licitum sit *donatori*," says, "Quære if it should not be *donato*, donee." Such a blunder might have been avoided by looking at the original, or might have been corrected even without doing so.

clude all alienations to corporate bodies or persons, it is clear that this statute was mainly directed against the clergy, both regular and secular. The ecclesiastical corporations were more numerous than any other, and had been more active in getting lands into their hands. This statute of Richard II. however expressly extends the statute De Religiosis to lands purchased to the use of guilds or fraternities; from which it has been inferred that the doctrine of mortmain had not, before the date of this statute, applied to guilds or fraternities. The statute De Religiosis is by this statute of Richard II. expressly declared to apply also to what we now call municipal corporations, and the statute places such bodies in all respects on the same footing, as to the purchase of lands, with "people of religion." If such bodies as these had been considered within the statute De Religiosis, it seems clear from the statute of Richard II. that their acquisitions of land had only recently become of such magnitude as to make it seem expedient to make a special declaration by statute as to them.

A statute of Henry VIII. (23 Henry VIII. c. 10), commonly called an act against superstitious uses, is perhaps hardly a statute against mortmain in the strict sense of the term. The statute enacted that feoffments, fines, recoveries, and other estates, made of lands and hereditaments to the use of parish churches, chapels, guilds, fraternities, commonalties, &c., erected and made of devotion or by common consent of the people without any corporation, or to uses for perpetual obits, or a continual service of a priest, were declared to be void as to such gifts as were made after the 1st of March in the year in which the statute was passed, for any term exceeding twenty years from the creation of such uses. From the words, "by common consent of the people, without any corporation," it can hardly be inferred that a number of individuals could take in perpetual succession without being incorporated, as some writers suppose; for "to take by perpetual succession without being incorporated" involves a contradiction. Nor can the statute be construed as admitting by implication such a power of perpetual succession in unincorporated indiv[illegible] The statute destroys all such esta[illegible] interests in land as in any or[illegible] persons were held to the use of [illegible] tablishments or collections of ind[illegible] mentioned and described in the s[illegible]

The subsequent statutes passe[illegible] reign of Henry VIII. (27 H. VI[illegible] 31 H. VIII. c. 13; 37 H. VI[illegible] together with the statute passe[illegible] first year of Edward VI. (1 E[illegible] c. 14), put an end to religious ho[illegible] many other establishments wh[illegible] been the special objects of the st[illegible] mortmain and superstitious uses. The consideration of what are now legally called superstitious uses, properly comes under the head of USES, SUPERSTITIOUS AND CHARITABLE.

The king could always grant a licence to alien in mortmain, or, more correctly speaking, he could remit the forfeiture consequent upon alienation, so far at least as concerned himself; but such remission could strictly only affect his own rights, and not those of the mesne lords, unless they also consented. It was the practice, before the king granted his licence, to sue out a writ of *ad quod damnum*, in order that inquiry might be made and the king informed what damage himself or others might sustain from the licence. This practice, however, fell into disuse long before the statute of the 7 & 8 Will. III. c. 37, which authorises the king to grant to any person or persons, corporate or not, licence to alien in mortmain, and to purchase and hold in mortmain any lands or hereditaments, and that such lands shall not be subject to forfeiture. When a licence to hold lands in mortmain is granted, it generally specifies the amount in value of the lands to be held by the corporation to which it is granted; and if the corporation should be ever found to acquire lands beyond this value, such lands are forfeited to the lord.

Until the statute of 9 Geo. II. c. 36, presently mentioned, though lands could not be aliened in mortmain, yet certain gifts to corporate bodies were held good. Thus, if a feoffment was made to a dean and chapter to perform a charitable use (within the 43 Eliz., c. 4), it was good, though they could not be seised to

another's use; and a device to a college or a charitable use within this statute was also good. (Hob. 136; 1 Lev. 284.)

The statute of the 9 Geo. II. c. 36, is now commonly, though not correctly, called the Statute of Mortmain. It applies only to England and Wales. It is entitled 'An Act to restrain the Disposition of Lands, whereby the same become inalienable.' The provisions and object of this enactment cannot be otherwise expressed than by stating the first section at full length:—"Whereas gifts or alienations of lands, tenements, or hereditaments, in mortmain, are prohibited or restrained by Magna Charta and divers other wholesome laws, as prejudicial to and against the common utility; nevertheless this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called charitable uses, to take place after their death, to the disherison of their lawful heirs: for remedy whereof be it enacted, that from and after the 24th day of June, 1736, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned, or appointed, or any ways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise for any estate or interest whatsoever, or any ways charged or encumbered by any person or persons whatsoever, in trust or for the benefit of any charitable uses whatsoever, unless such gifts, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate (other than stocks in the public funds), be made by deed indented, sealed, and delivered, in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor (including the days of execution and death), and be enrolled in His Majesty's High Court of Chancery within six calendar months after the execution thereof; and unless such stocks be transferred in the public books usually kept for the transfer of stocks, six calendar months at least before the death of such donor or grantor (including the days of the transfer and death); and unless the same be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him." The act provides that what relates to the time before the grantor's death or sealing the deed and making the transfer shall not extend to any purchase to be made really and bonâ fide for a full and valuable consideration, actually paid at or before the making of such conveyance or transfer without fraud or collusion. The two universities of Oxford and Cambridge, and the colleges within them, were excepted from the operation of the act; and the colleges of Eton, Winchester, and Westminster, but in favour of the scholars only, were also excepted. This act limited the numbers of advowsons which any college or house of learning (before referred to in the act) could hold; but this restriction was removed by the 45 Geo. III. c. 101. By the 5 Geo. IV. c. 39, the British Museum is excepted from the statutes of mortmain; and various other public bodies have been in like manner excepted by act of parliament. The judicial interpretation of this act, called the Mortmain Act, has prevented a large amount of property from being given to charitable uses. A bequest of money for charitable purposes, to arise from the sale of land, is void; or of money due on mortgages; or of money to pay off the mortgage on a chapel; or of money to build a chapel, unless some land already in mortmain is distinctly pointed out by the terms of the bequest; or of mortgages both in fee and for years; or of money to be laid out on mortgage security. This act can only be called a Mortmain

Act with any propriety so far as it relates to corporate bodies, and even with regard to them with no strict propriety, inasmuch as the Mortmain Acts were intended to prevent corporate bodies holding lands to their own use, or to prevent other persons holding them to the use of corporate bodies. The act is in fact intended to limit the power of giving property for charitable purposes to any person or persons, and is very improperly called a Mortmain Act, if we consider that many gifts of land for charitable purposes were not considered, before the passing of this act, as within the old statutes of mortmain.

The history of mortmain is intimately connected with the ecclesiastical and civil history of this country. The jealousy which all mankind feel against rich and powerful bodies of men, who are combined in a perpetual brotherhood and fraternity, and the constantly increasing wealth and power of the ecclesiastical bodies in this country, doubtless contributed strongly to the passing of the enactments called the statutes of mortmain; and this, independently of the solid reasons against such bodies having large possessions, so long as the strict system of tenures continued. In modern times, when the lord can lose nothing by land being conveyed to a corporation or to a charitable use, except the remote contingency of escheat, a new notion lies at the foundation of the restraints upon such transfers or gifts of land, which, as as Lord Hardwicke expressed it, was this:—

"The mischief which the legislature had in view in the Mortmain Act (as appears from the recital, and which is agreeable to the title) was to restrain the disposition of lands whereby they become inalienable." In another place he observes that "the particular views of the legislature were two: first, to prevent locking up land and real property from being aliened, which is made the title of the act; the second, to prevent persons, in their last moments, from being imposed on to give away their real estates from their families."

It will be perceived that the provisions of the act very imperfectly correspond with this explanation of its object. Thus money may be given by will (if unaccompanied with a direction to lay it out in land) to an eleemosynary corporation which is empowered to hold land in mortmain, and it may be laid out in land, or, if necessary, a licence may be obtained from the crown for that purpose. The judicial exposition, that money given by will, to arise from the sale of lands, is within the act, involves a direct contradiction; it being expressly provided by the mode of donation, in the case just mentioned, that the land shall *not*, so far as the donor can prevent it. come into hands in which it will be inalienable.

The act, which is a clumsy contrivance, and the exposition of it, are in fact directed against gifts for charitable uses; though it is probable that the notion of the impolicy of allowing lands to be for ever set apart, or "locked up," had also some influence on the legislature. If this, however, had been the leading idea, a repeal of the statute which allows the crown to grant a licence to hold lands in mortmain would have been a proper addition to the act. But the legislature or the promoters of the act were apparently anxious to find out some reason or excuse for passing such an act in a country where gifts for charitable uses have been so long established and approved by popular opinion. The exceptions made in this act in favour of the universities of Oxford and Cambridge and the colleges in those places also show that there was a party in the legislature strong enough to prevent the operation of this act being extended to those corporate bodies.

Various acts have been passed since the 9 Geo. II. c. 36, as already stated, for exempting various bodies from the operation of that act. These acts chiefly apply to the Established Church. In 58 Geo. III. c. 45, amended by 59 Geo. III. c. 134, and 2 & 3 Wm. IV. c. 61, are intended to promote the building of new churches in populous places in England and Wales. The 43 Geo. III. c. 107, was passed to exempt decrees and bequests to the governors of Queen Anne's Bounty [BENEFICE].

There is no doubt that the Mortmain

Act of George II. has been productive of benefit; and it would be better for its provisions to be made stricter instead of being relaxed, especially in the case of ecclesiastical bodies and persons. The acquisition of lands by corporate bodies, except such as are established for purposes of general interest, is an evil in any country, especially in a country where the land is so limited in amount as in England. Facilities for sale and transfer are rather wanted than facilities for giving land to bodies which cannot sell, and from the nature of their constitution present obstacles to the improvement of land and its productive employment.

It should be borne in mind that the terms charities and charitable uses have a legal meaning very different from the popular meaning of the term charity.

The great amount of property in England and Wales which is appropriated to charitable uses, and the importance of many of those establishments which are supported by such property, render it necessary to give some exposition of the nature and administration of charities in this country, which is most conveniently done under the head of USES, CHARITABLE.

The term *Mortification* in Scotland expresses pretty nearly what mortmain does in England.

According to Stair (book ii. tit. iii. 39, ed. Brodie), "infeftments of mortified lands are those which are granted to the kirk or other incorporation having no other *reddendo* than prayer and supplications and the like: such were the mortifications of the kirk lands granted by the king to kirkmen, or granted by other private men to the provost and prebendars of college kirks founded for singing; or to chaplainries, preceptories, altarages, in which the patronage remained in the mortifiers." The act of 1587, c. 29, passed in the eleventh parliament of James VI., began by reciting that the king "and his three estaites of parliament perfitely understood the greatest part of his proper rent to have bene given and disponed of auld to Abbaies, Monasteries, and utheris persons of Clergie," &c.: it further recited that "his Hienes, for the great love and favour quhilk he bearis to his subjectes, was nawaies minded to greeve them with unprofitable taxations, specially for his royal support." The act then went on to declare that it was "founde maiste meete and expedient that he sall have recourse to his awin patrimonie disponed of before (the cause of the disposition now ceasing) as ane helpe maist honorable in respect of himselfe and least grievous to his people and subjectes." The act then proceeded to unite and annex to the crown (with the exceptions after specified in the act) all the lands, &c., belonging to the ecclesiastical and religious personages therein mentioned. This act was in effect more extensive than the similar acts of Henry VIII. in England.

Since the Reformation, lands given in Scotland for charitable purposes are given to the trustees of the charity, to be held either in blanch or feu holding. (Bell's *Dict. of the Law of Scotland.*)

MUNICIPAL CORPORATIONS. The term Municipal is derived from the Latin adjective Municipalis, which signifies appertaining to a Municipium. The word Municipium had several early historical significations among the Romans, which it is not necessary to explain here. We use the Roman term Municipal to indicate the corporation of a town, but our municipal corporations resemble the Italian cities in the later period of the Republic. After the Social War, B.C. 90, the Italian towns became members of the Roman state; they were subject to Rome, but retained their own local administration. Both the original Roman colonies in Italy and the Municipia (not colonies), as they were called, enjoyed this free condition. A municipal constitution was the characteristic of these Italian towns. The notion of an incorporated body, as applied to a community, was familiar to the Romans, and their several municipalities were accordingly considered and called republics (Res Publicæ). The Roman colonies in Italy had a popular assembly and a senate, as Rome had; the people chose their own magistrates, and they had legislative power in their own concerns. The chief magistrates were sometimes two (duumviri) and sometimes four (quatuorviri):

their principal duties were the administration of justice. Their office was annual. The history of these Italian municipalities is traced by Savigny, in his History of the Roman Law in the Middle Ages (vol. i.). The Romans had colonies, in their sense (Coloniæ, COLONY, p. 559) also in the provinces, in Africa, Spain, France, and Britain. All these colonies had a municipal organization. They were subjects of Rome and under the general law of Rome, but they managed their own internal administration as corporate bodies. As these communities existed wherever the Romans formed a provincial government, it is all but historically demonstrated that the town communities of our country, and of other parts of Europe where they exist, have either been directly transmitted from the Roman town-communities as they existed under the empire, or have been formed on that model. London itself, though never a Roman colony, in the strict sense of that term, was a place of considerable trade under the empire, and as England was then a Roman province, we may assume that this flourishing Municipium would have a local administration like that of other large towns within the Roman provinces. The Romans had also colonies in England, in the proper sense of that term; and the word Colonia always implies a local administration. It cannot be proved that the Saxons brought with them to England such a system of town-communities; nor was their mode of settlement of such a character as to lead us to suppose that they could have established them at first. They certainly found them existing in the chief towns of the kingdom, and it is probable that this Roman institution has continued without interruption from the first reduction of England to a Roman province to the present time.

Some writers however are of opinion that our municipal corporations are of Saxon or Teutonic origin; and the remarks which follow are made in conformity to that opinion. The Anglo-Saxon terms *byrig*, *byrg*, *burh*, &c. the various old forms of *borough*, like the German *burg* of the present day, was the generic term for any place, large or small, fortified by walls or mounds. The municipal organization of the Anglo-Saxons was not, however, confined to their towns. Their boroughs were only parts of one great municipal system, extending over the whole territory. But the boroughs by distinction, the boroughs in political estimation, were those towns (apparently all the considerable ones) which had each, under the name usually of *burgh-reve* or *port-reve*, an elective municipal officer exercising functions analogous to those of the elective-reve of the shire or *shire-reve*. Of this local organization enough is discoverable to show most clearly that it had never been moulded by a central authority, but, on the contrary, that the central authority had been, as it were, built up on the broad basis of a free municipal organization.

For a clear exposition of the essentially republican basis of all the public institutions of the Anglo-Saxons we would refer to Mr. Allen's 'Inquiry into the Rise and Growth of the Royal Prerogative in England,' 8vo., 1830. The *cyne* or *kin* of the Saxons was synonymous with *nation* or *people*; and *cyn-ing* or *kin-ing* (by contraction, *king*) implied, as Mr. Allen remarks, that the individual so designated was, in his public capacity, not, as some modern sovereigns have been willing to be entitled, the *father* of the people, but their *offspring*. In the introduction and use of the modern word *kingdom*, we trace a still more remarkable perversion. The Anglo-Saxon *cyne-dom* or *kin-dom* denoted the extent of territory occupied and possessed by the *kin* or nation—an import diametrically differing from that of *kingdom*, which, in the decline of the Norman tongue as the language of the government implanted by the conquest, was substituted for the Norman *royaulme* (in modern English *realm*)—as the word *king* itself, with as little regard to its etymological derivation, was substituted for the Norman *roy*. Thus it is manifest that the difference of meaning between *kin-dom* and *king-dom* is as wide as that between the principle which recognized the nation at large as the original proprietor of the soil, and that which vests such absolute proprietorship exclusively in the crown—a distinction which it is most important to perceive and to bear in mind.

Under the Anglo-Saxon government the revenue of the king, or rather of the state, had been collected in each shire by the shire-reve, and in each municipal town by the borough-reve or port-reve. But in the one case, as in the other, this officer was the elective head of the municipality; for the shire itself was no other than a certain extent of territory municipally organised. But after the Conquest, instead of the elective Saxon reve, there was placed over each shire a Norman *viscount*, and over each municipal town a *bailiff*, both appointed by the Norman king. It would have been vain for the burgesses to appeal to the mercy of the king, but they found means of appealing to his cupidity. He discovered that their eager desire to rid themselves of the royal bailiff, urged them to offer him a higher sum to be collected from and by themselves, and transmitted directly to his exchequer, than he could farm their town for to an individual; and hence the frequent charters which we soon find issuing to one borough after another, granting it to the *burgesses* in *fee-farm*, that is, in permanent possession so long as they should punctually pay the stipulated crown-rent.

The interference of a royal provost in their internal concerns being thus withdrawn, the towns returned naturally to their former free municipal organization. They had once more a chief administrator of their own choice; though in few cases was he allowed to resume either of the old designations, *borough-reve* and *port-reve*. In all cases he now acted as *bailiff* of the Norman king; accounted at the exchequer for the farm or crown-rent of the borough: in most, he received the Norman appellation of *mayor*, which, denoting in that language a municipal chief officer, was less odious to the Saxon townsmen than that of bailiff; though in some he received and kept the title of bailiff only.

The charters of the Norman kings were constantly addressed to "the citizens," "the burgesses," or "the men" of such a city or borough; and the sum of the description of a burgess, townsman, or member of the community of the borough, as Madox in his 'Firma Burgi' observes, was this:—"They were deemed townsmen who had a settled dwelling in the town, who merchandized there, who were of the hans or guild, who were in lot and scot with the townsmen, and who used and enjoyed the liberties and free customs of the town." The municipal body, in short, consisted of the resident and trading inhabitants, sharing in the payment of the local taxes and the performance of the local duties. This formed substantially a household franchise. Strangers residing temporarily in the town for purposes of trade had no voice in the affairs of the borough, nor any liability to its burdens, which, at common law, could not be imposed upon them without admission to the local franchise. The titles to borough freedom by birth, apprenticeship, and marriage, all known to be of very remote antiquity, seem to have been only so many modes of ascertaining the general condition of established residence. The title by purchase was a necessary condition for the admission of an individual previously unconnected with that particular community, in those days when such admission conferred peculiar advantages of trading; and the right of bestowing the freedom on any individual by free gift, for any reason to them sufficient, was one necessarily inherent in the community, for the exercise of which they were not responsible to any authority whatever. The freemen's right of exclusive trading too had some ground of justice when they who enjoyed it exclusively supported the local burdens. Edward III.'s laws of the staple authorized the residence of non-freemen in the staple towns, but at the same time empowered the community of the borough to compel them to contribute to the public burdens; and under these regulations it is that the residence of non-freemen appears first to have become frequent.

The progress of wealth, population, and the useful arts produced, in many of the greater towns, the subdivision of the general community into *guilds* of particular trades, called in many instances since the Norman æra *companies*, which thus became avenues for admission to the general franchise of the municipality. In

their greatest prosperity these fraternities, more especially in the metropolis, became important bodies, in which the whole community was enrolled; each had its distinct common-hall, made by-laws for the regulation of its particular trade, and had its common property; while the rights of the individuals composing them, as members of the great general community, remained the same.

But for several centuries after the Conquest, any select body forming within a municipal town a corporation, in the modern sense of the term, was entirely unknown. When the men of a town became answerable to the crown for a *ferm* or other payment due from their community, then the barons of the exchequer, the king's attorney, or his other clerks and officers, charged, impleaded, and sued the townsmen collectively, by any name by which they could be accurately designated, and they answered by one or more of their number, deputed for that purpose by the rest. There was also a method of summoning a community to appear in the king's courts of law, by six or some other number of "the better and more discreet" inhabitants, to be nominated by the rest. The duties of the boroughs to the king were rendered entirely by their executive officers, elected yearly by the whole community. Generally it was granted to them to elect a single chief magistrate, bearing, as already observed, the Norman title of mayor, who became answerable to the crown for all things in which the bailiff or bailiffs were previously responsible, and the officers bearing the latter title declined to an inferior rank. The executive officer, thus elected, it was always necessary to present to the king, or some one appointed by him, to be accepted and sworn faithfully to discharge his duties both to the crown and to the community; and to receive these presentations, accept the officer elected, and take his oath, became a part of the duties of the treasurer and barons of the exchequer. To these, when the citizens or burgesses had made their election, it was notified by letters under their common seal, and the mayor elect was presented to them at the exchequer by two of his fellow-burgesses. The same proceeding was observed with regard to *sheriffs*, which some of the larger cities and towns acquired power to elect as counties of themselves; and for the like reason, because of the duties they had to render to the king. In course of time communities acquired by charter the privilege of taking the oaths of their own officers, or they might be tendered to the constable of the nearest royal castle. If such officer performed any official duty without being duly sworn, it was deemed a contempt, and the liberties were liable to be seized into the king's hands, unless redeemed by fine or a valid excuse.

But the sole legislative assembly in every municipal town or borough was originally the Saxon *folk-mote*, or meeting of the whole community, called in many places the *hundred*, and where held within doors, the *hus-ting* or the *common hall*. This assembly was held for mutual advice and general determination on the affairs of the community, whether in the enacting of local regulations, called *burgh-laws* (of which some persons suppose *by law* to be a contraction), the levying of local taxes, the selling or leasing of public property, the administration of justice, the appointment of municipal officers, or any other matter affecting the general interests. In this assembly, held commonly once a week, appeared the body of burgesses in person, to whom, together with their officers, whom they elected annually, every general privilege conveyed by the royal charters was granted; and however vested in later times, every power exercised in the antient boroughs has derived its origin from the acts of this assembly. The increase of population and extension of trade in the larger towns led naturally to the introduction of the representative principle in local legislation, &c., and to an aristocratic organization. Next, as the distinction of *race* became lost in the fusion of blood and the rise of the modern English tongue, other circumstances sprung up, tending to create and perpetuate a distinction of civic *classes*. The progress of individual wealth, as commercial property became more secure against exactions by arbitrary power, and the commercial resources of the country became deve-

loped, was among the most powerful of these causes. In London, as early as the close of Henry III.'s reign, the aldermen, and those calling themselves "the more discreet of the city," made an attempt to elect a mayor, in opposition to the popular voice; which, however, ended in the triumph of the latter, in a general folk-mote held at St. Paul's Cross.

The richest and most influential persons, however, being generally chosen by the inhabitants at large to the highest places in the municipal councils, were often tempted to seek the perpetuation of their authority without the necessity of frequent appeals to the popular voice, and even to usurp powers which it had not delegated at all. Such usurpations however were often vigorously resisted by the community at large; and the contests were sometimes so violent and obstinate as to lead to bloodshed. But in course of time, the crown itself, so long indifferent to the details of municipal arrangements, found sufficient motives for encouraging these endeavours of internal parties to form close ruling bodies, irresponsible to the general community.

We find faint indications of this policy in several of Henry VII.'s charters; as in one to Bristol in 1499, establishing a self-elective council of aldermen; who yet, though justices, had no exclusive power of municipal government. But the fierceness of religious dissension, which divided the whole nation at the close of the following reign, made the management of the House of Commons an object of primary importance to either Catholic or Protestant successor to the crown. This therefore was the æra of the most active exercise of the prescriptively discretional power of the sheriffs to determine within their several bailiwicks, in issuing their precepts for a general election, which of the municipal towns should, and which should not, be held to be parliamentary boroughs. To arbitrarily omit any of the larger towns, or even of the smaller ones, which in public estimation had a prescriptive right to be summoned, was too open an attack on the freedom of parliament to be now ventured upon. The calling of this right into action in boroughs wherein it had lain dormant from the beginning, or, though once exercised, had fallen into disuse from alleged poverty, decay, or other causes, was a more plausible course of proceeding; and notwithstanding the evident partiality with which it was conducted, was permitted to pass without legislative interference. [COMMONS, HOUSE OF.]

Accordingly we find in the reigns of Edward VI., Mary, and Elizabeth, besides seventeen boroughs *restored* to parliamentary existence, forty-six now first beginning to send members, making altogether an addition to the former representation (as no places were now *omitted*) of sixty-three places returning 123 members. But the most important feature in this policy of the crown at this period—that which mainly contributed to attain the object of that policy—was its novel assumption of the right of remoulding, by *governing charters*, the municipal constitution of these new or revived parliamentary boroughs. Most of these charters expressly vested the local government, and sometimes the immediate election of the parliamentary representatives, in small councils, originally nominated by the crown, to be ever after self-elected.

This was the first great step on the part of the crown in undermining the political independence of the English municipalities. The successful working of the application of this novel principle to the new or restored parliamentary boroughs, encouraged the Stuarts not only to continue this system of erecting close boroughs, but to make a second and a bolder advance in the same direction, by attacking the constitutions of the prescriptively parliamentary municipalities themselves.

In the twelfth year of James I., it was declared that the king could, by his charter, incorporate the people of a town in the form of select classes and commonalty, and vest in the whole corporation the right of sending representatives to parliament, at the same time restraining the exercise of that right to the select classes; and such was thenceforward the form of all the corporations which royal charters created or remodelled. After

this fashion it was that, under James I. and Charles I., seventeen more parliamentary boroughs were revived; and that James created four, making a total addition to the borough representation of forty-one members, besides the four members for the two English universities, which James first introduced.

After the reign of James II., no attempt was made to recur to the Stuart measures against such of the corporations as still retained in whole or in part, a popular constitution; yet "the charters which have been granted since the Revolution are framed nearly on the model of those of the preceding era: they show a disregard of any settled or consistent plan for the improvement of municipal policy corresponding with the progress of society. The charters of George III. do not differ in this respect from those granted in the worst period of the history of these boroughs." (Report of Commissioners of Corporation Inquiry.)

The abuses existing in Municipal Corporations had thus, for more than two centuries, been a matter of constant and nearly universal complaint. Any general remedy was however impracticable, while abuses in the representation of the people in Parliament were to be maintained. The rotten and venal boroughs, of which the franchise was abolished or amended by the Reform Act, were the chief seats of corporation abuse: and the correction of the local evil would have been the virtual destruction of the system by which the ruling party in the state retained its political power. Every borough having the privilege of returning a member to Parliament, was indispensable to one or the other of the leading political parties, and in these boroughs the greatest abuses naturally prevailed, because impunity in the neglect of duty and in the maladministration of the funds of the community, was the cheapest and most convenient bribe by which the suffrage of the corporators could be purchased. Impunity being thus secured and perpetuated in the most corrupt of the Parliamentary boroughs, it would have been too hazardous an experiment on the toleration of the people to have undertaken to reform the comparatively insignificant abuses of the non-parliamentary boroughs. The greater abuse thus served to shelter the lesser, until the passing of the Reform Act, which, in destroying the importance of the corrupt Parliamentary corporations, rendered certain the speedy re-organization or the abolition of the whole, as the respective cases might require.

Accordingly, in about a year after the passing of the 'Act to amend the Representation of the people in England and Wales,' the king issued (July, 1833) a Commission under the Great Seal to twenty gentlemen "to proceed with the utmost dispatch to inquire as to the existing state of the Municipal Corporations in England and Wales, and to collect information respecting the defects in their constitution—to make inquiry into their jurisdiction and powers, and the administration of justice, and in all other respects; and also into the mode of electing and appointing the members and officers of such corporations, and into the privileges of the freemen and other members thereof, and into the nature and management of the income, revenues, and funds of the said corporations."

The commissioners thus appointed divided the whole of England and Wales into districts, each one of which was, in most cases, assigned to two commissioners. Their reports on individual corporations occupied five folio volumes; abstracts of information relative to important matters occupied a portion of a sixth (the first printed), and the results of the whole inquiry were presented in a general Report signed by sixteen of the commissioners, who thus conclude their observations:—

"Even where these institutions exist in their least imperfect form, and are most rightfully administered, they are inadequate to the wants of the present state of society. In their actual condition, where not productive of positive evil, they exist, in the great majority of instances, for no purpose of general utility. The perversion of municipal institutions to political ends, has occasioned the sacrifice of local interests to party purposes, which have been frequently pursued through the corruption and demoralization of the electoral bodies.

"In conclusion, we report to your Majesty, that there prevails amongst the inhabitants of a great majority of the incorporated towns a general, and, in our opinion, a just dissatisfaction with their municipal institutions, a distrust of the self-elected municipal councils, whose powers are subject to no popular control, and whose acts and proceedings, being secret, are unchecked by the influence of public opinion—a distrust of the municipal magistracy, tainting with suspicion the local administration of justice, and often accompanied with contempt of the persons by whom the law is administered—a discontent under the burthens of local taxation, while revenues that ought to be applied for the public advantage are diverted from their legitimate use, and are sometimes wastefully bestowed for the benefit of individuals, sometimes squandered for purposes injurious to the character and morals of the people. We therefore feel it to be our duty to represent to your Majesty that the existing municipal corporations of England and Wales neither possess nor deserve the confidence or respect of your Majesty's subjects, and that a thorough reform must be effected before they can become, what we humbly submit to your Majesty they ought to be, useful and efficient instruments of local government."

Two of the commissioners, Sir Francis Palgrave and Mr. Hogg, dissented from the views presented in the Report. Their protests were urgently called for by the opponents in Parliament of the reform proposed by the ministers, and they were accordingly printed; but no great weight was attached by any party to their contents after they were made public.

On the 5th of June, 1835, Lord John Russell brought in a bill to remedy the defects complained of; and on the 9th of September, the royal assent was given to "an act to provide for the regulation of municipal corporations in England and Wales." (5 & 6 Wm. IV. c. 76.) We shall here briefly notice the principal features of this measure.

I. The LIMITS to which the provisions of Lord John Russell's bill extended, included in round numbers a population of about two millions. This number was not materially altered by the modifications introduced in the bill in its passage through parliament. The number of boroughs originally proposed to be directly included in the operation of the bill, was 183. This number was reduced to 178. The names of these boroughs are enumerated in two schedules appended to the act; to those more important boroughs contained in schedule A, amounting to 128 in number, a commission of the peace is assigned by the act, while those contained in schedule B, amounting to 50, were only to have a commission of the peace granted on application to the crown, as will be hereafter explained.

Many boroughs, on account of their small importance, are not included in the operation of the act. London was to be made the subject of a special measure, which, however, has never been introduced.

The application of the act to the boroughs in schedules A and B, is determined by the fact of the places having been before subject to the government of municipal corporations. The objects of such government are equally important and necessary for *all* inhabited districts, whether rural or urban. The rural districts are, however, now subject to the jurisdiction of justices of the peace of counties, and the divisions of counties. The existence of prejudices supposed to be based on the different interests of the two populations may be an obstacle, but it must be admitted that the keeping the two populations separated in all that concerns the administration of government is a very effectual means to perpetuate their mutual independence and estrangement.

The boundaries of the individual boroughs were settled as follows, by the act for corporation reform. Those in the first part of schedule A amounting to 84, and those in the first part of schedule B, amounting to 9, being parliamentary boroughs, their parliamentary boundaries were taken as settled by the boundary act (2 & 3 Wm. IV. c. 64) until altered by parliament. In the remaining boroughs the municipal boundaries remained as before, until parliament should otherwise direct.

The division of the boroughs into wards was also effected for electoral purposes. The number of wards in each individual borough is pointed out in schedules (A and B). The bounds of these wards and the number of councillors to be elected by each, were settled by barristers shortly after the passing of the act. Liverpool is divided into 16 wards; smaller boroughs into 12, 10, or fewer wards; and the smallest boroughs are not divided into wards at all.

II. The OBJECTS of municipal government in England have been usually confined to the appointment and superintendence of the police, the administration of justice both civil and criminal, the lighting of the district to which their jurisdiction extended, and the paving of the same, and in a few cases the management of the poor. These objects are of unquestionable importance, and although the number of useful objects of municipal government might be extended, the act does not attempt to do so, but is confined to the improvement of the means by which the objects of the old corporations are proposed hereafter to be attained. The first section of the act repealed so much of all laws, statutes, and usages, and of all royal and other charters, grants, and letters patent, relating to the boroughs to which the act more immediately extends, only so far as they are inconsistent with the provisions of the act, and thus left untouched the whole of the substance of those local laws which relate merely to the objects of municipal government, with the exception merely of the administration of justice, which is considerably modified by the act.

But as those objects had hitherto failed to be obtained, as far as could then be determined through the want of responsibility of the functionaries to those for whose benefit they were presumed to be appointed, the Municipal Reform Act is in consequence almost wholly confined to the attempt to render the functionaries of the municipalities eligible by, and responsible to, the persons whose interests they are appointed to watch over and protect.

In providing a more responsible and effective municipal organization, it was necessary as well to change the constituency as the functionaries; for it was usually by the smallness of the constituency, or by their accessibility to corruption, that the impunity of the functionaries had been secured.

III. The constituency of our corporations are usually known by the name of the freemen. So inapplicable to the circumstances of modern times, and so at variance with the principles of representation were the greater number of these institutions, that the freemen (the constituency itself) were nominated and admitted by the ruling body, which was in turn to be elected by the freemen. There were, however, several other modes by which the freedom of these corporations was obtained, as by birth, or by marriage with the daughter or widow of a freeman, or by servitude or apprenticeship. In London,* Shrewsbury, and many other towns, a previous admission into certain guilds or trading companies was required in addition, which admission was procured by purchase.

The rights of freedom, or citizenship, or burgess-ship, being privileges confined to few persons, were in many cases of considerable value to the possessor, particularly when they conferred a title to the enjoyment of the funds derivable from corporation property, or of exemption from tolls or other duties. These valuable privileges had been often purchased by considerable sacrifices. The expectations founded on the past enjoyment of such privileges, were a proper subject of consideration for the legislature. It was accordingly provided that although the public interests were to be insured by the prospective abolition of all the privileges and exemptions in question, the individuals already interested in them should not have their personal expectations thereby destroyed. On this principle the act reserved the respective rights of the freemen and burgesses, their wives and widows, sons and daughters, and of apprentices, to acquire and enjoy the same share and benefit in the lands and other property, including common lands and

* Previous admission into a City Company is not now necessary.

public stock of the borough or corporation, as well as in property vested for charitable uses and trusts, as fully and effectually as might have been done if the act had not been passed (§ 4). Provision was made against the continuance of the abuse by which the payment of the just and lawful debts of corporations had been heretofore postponed to the claims of the persons whose rights were now in question. As these claims, so tenderly reserved by the legislature, began in wrong, there could be no comparison made between them and the rights of a lawful creditor, who were accordingly to be paid before the freemen could claim the benefit of his privileges. Besides these rights to the enjoyment of the property of the municipality, the exemptions from tolls or other duties were continued to every person who on the 5th of June, 1835, was entitled to such exemption, or even if he could on that day claim to be admitted to such exemption, on payment of the fines or fees to which he might have been liable.

The act also reserved the right to vote for members of parliament to every person who, if the act had not been passed, would have enjoyed that right as a burgess or freeman by birth or servitude. These persons' names are to be inserted by the town-clerk on a list to be entitled the "Freemen's Roll." The right of voting as a freeman for members of parliament can only be acquired by birth or servitude, but a person can claim to be put upon the "Freemen's Roll," for the exercise of municipal privileges, in respect of birth, servitude, or *marriage*.

Having protected the personal interests of those in favour of whom much of the abuse of the municipal system had operated, the act provided against the future existence of such interests, by enacting (§ 3) that no rights of burgess-ship or freedom should be acquired by gift or purchase, and more effectually still by creating the constituency which was to replace the freemen. And the 13th clause provided that after the passing of the act no person should be enrolled a burgess in respect of any other title than that enacted by the act. The constituencies of a municipality now consist of every male person of full age, who on the last day of August in any year shall have occupied premises within the borough continuously for the three previous years, and shall for that time have been an inhabitant householder within seven miles of the borough, provided that he shall have been rated to the poor rates, and shall have paid them and all borough rates during the time of his occupation.

The occupiers of houses, warehouses, counting-houses, and shops (the premises which confer the qualification), who at the same time contribute to the rates, are nearly all those who are pecuniarily concerned in the administration of the funds of the town. They are, however, very far from constituting the whole of those interested in the administration of justice and in the efficiency of the police. As, however, the whole number of such occupiers is reduced by requiring the qualification of three years' residence, the number of the constituency may at any time be expected to be very far short of the persons actually contributing to the funds of the corporation, and still more so of those interested in the good government of the borough.

The grounds of a property qualification are perfectly clear, when the rights of the person, of life and limb, and reputation, in which all men are nearly equally interested, are not concerned, and when on the other hand the administration of a fund subscribed to only by persons having the possession of the qualifying property is the sole object of the government. In the municipalities, however, other interests are concerned than the raising of funds and the administration of them for the purposes of protecting property; and these interests, many of them of personal importance exceeding that of property, such as are involved in the administration of police and criminal justice, may appear not to be represented where property alone is the ground of qualification. Nevertheless, the possessor of property cannot divest himself of these other interests; and whenever property is represented, these interests are likewise in some measure represented. The chief justification of property qualification appears to have been, in the present case, that the

numbers who would have the franchise would be too numerous to be easily influenced by sinister interests, while on the other hand, as the chief contributors to the fund, they would be most interested in its proper administration, as they would be the persons who must chiefly bear the expenses and the evils of any abuse of it. They would, therefore, if they had the power to do so, most effectively resist any mal-administration, and would most strenuously support those improvements by which they would be in the largest degree benefited. Considering the close connexion of the interests of all classes with one another, it can scarcely be conceived that the interests in good government of the constituencies created by this act, are not nearly identical with the general interests of the communities amongst whom they live. The policy of restraining the suffrage by requiring a three years' residence is undoubtedly more questionable. It is true that it has often occurred that immense numbers of freemen have been created to serve a particular purpose of the ruling body. Whenever there was a general election the number of freemen admitted was increased. In 1826 the number of freemen admitted in 128 cities and towns was 10,797, and in the previous year only 2655; in 1830 the admissions were 9321, and in the year preceding only 1433. In 1826 about 1000 freemen were admitted at Maldon during an election. The deliverance from the systematic corruption of a numerous but venal and fluctuating constituency is decidedly one of the greatest benefits conferred on the country by the act.

Provision is made by sections 11 to 24 for the registration of the burgesses by the overseers of their respective parishes, for the correction and publication of the burgess lists by the town-clerk, and for the revision of such lists by barristers the first year, and thenceforth by the mayor and assessors: which latter are officers created for the purpose by the act. The machinery for the registration of the constituency is modelled on that of the Reform Bill, with such modifications as were found desirable, and were required by the very different circumstances to which the two acts apply.

Excepting that of election and control of its officers, the constituency has none of those exclusive privileges conferred on them which have been usually enjoyed by the freemen. One of the most pernicious of these was the privilege of trading within the limits of the municipality, exclusively conferred on those who might be free of the borough or of certain guilds, mysteries, and trading companies. By the 14th section of the Municipal Act, it is enacted that "every person in any borough may keep any shop for the sale of lawful merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft, for hire, gain, sale, or otherwise, within any borough." But London, as already observed, is still excepted from the operation of this act, and the corporation of London has often made the attempt to compel persons to take up their freedom.

IV. The functionaries, together with the constituency, complete the body of the corporation. Both have borne the most various denominations hitherto—the whole body now, in all municipalities, bear the name of "the mayor, aldermen, and burgesses," and they are constituted corporations; that is, they are empowered to do all legal acts as a body, and not as individuals; they may sue and be sued by the corporate name, and they transmit the rights they acquire as corporators to their corporate successors.

The 25th clause provided for the election in every borough of a "mayor," of a certain number of persons to be the "aldermen," and of a certain number of other fit persons to be the "councillors."

The councillors, who are collectively called "the council" of the borough, are the body amongst whom the mayor and aldermen are chosen, and of whom those functionaries continue after their election to constitute a part. The council collectively is intrusted with the whole of the deliberative and administrative functions of the corporation. They appoint the town-clerk, treasurer, and other officers for carrying into execution the various powers and duties vested in them by the act. They may appoint as many committees either of a general or special nature for any purposes which in their

judgment would be better regulated and managed by such committees. The acts of every committee must be submitted to the whole council for approval, lest the borough should be governed by a small knot of persons, whose appointment as a committee would thus become as much a matter of favour, contest, and corruption, as that of the old municipal governing bodies. The council execute all the offices previously executed by the corporate bodies whom they superseded. They appoint from their own body a watch committee, of which the mayor is, by virtue of his office, the head; and this committee appoints a sufficient number of effective men to act as constables and preserve the peace by day and night.

The Council may take on themselves the powers of inspectors (a species of officers appointed under the 3 & 4 Wm. IV. c. 90), as far as relates to the lighting of the whole or any part of the borough, provided that no local act already exists for the lighting of the borough; in which case they are empowered to bring those parts of the borough to which the local act may not apply under its operation, as fully as if such parts had been originally included in such act (§§ 88, 89). They have also a power of making such by-laws as to them may seem proper for the good rule and government of the borough; for the prevention and suppression of all such nuisances as are not already punishable in a summary manner; and to appoint by these by-laws such fines, not exceeding 5*l.*, as they may deem meet for the prevention and suppression of offences. This power of minor legislation is most important and it is properly guarded by rendering it necessary that two-thirds at least of the council should be present at the making of the by-law, and by requiring that a delay of forty days shall intervene, after a copy has been sent to one of the Secretaries of State, before it shall come into operation. Her Majesty may disallow any by-law within that period, or may enlarge the time within which it shall not come into operation.

The Council have the control of the borough fund; any surplus in which, after payment of all necessary expenses and of all just demands, they are to apply for the public benefit of the inhabitants and improvement of the borough. If the fund be insufficient, they are to order a borough rate, in the nature of a county rate, to make up the deficiency, for which special purpose alone they have the powers of justices of peace given to them for assessing, collecting, and levying it. They have powers of leasing buildings and land proper for building. But to prevent the practice of partial and fraudulent transactions, very common in the old corporations, these powers are subject to very considerable restrictions. They have also a power to set aside collusive sales and demises of corporate property made since the 25th June, 1835; many of which were threatened by the refractory corporations (§§ 94, 95). They have also a power, if they think it requisite that one or more salaried police magistrates should be appointed, to fix the amount of such magistrates' salary, and upon their application her Majesty is empowered to appoint the number of magistrates required. To meet the case of delay in any borough, no new appointment by her Majesty is to take place after any vacancy, until the council make a fresh application.

When a commission of the peace is granted to a borough, the council provide the requisite police officers. Other subsidiary and occasional powers are vested in the council, which is thus seen to be effectually the governing body of the corporation.

These powers of the council comprise the whole of the strictly municipal powers affected by the act, and the council will thus be seen to be the whole of the effective machinery of corporation government. Their power is carefully limited: the most important check, however, to the renovation of corporation abuses is contained in the provision for the management of the borough fund, the periodical audit of accounts, and their subsequent publication. The frauds by the officers of the old corporations, the division of the funds for the interest of the governing body, their application to the corruption of the freemen in every shape in which money could be applied, formed

the chief heads of accusation against those bodies; and the uncontrolled and irresponsible disposition of funds by the new councils would in the very nature of things eventually lead to the use of them for the benefit of these bodies, however well they might in other respects be constituted, and the past history of corporations would infallibly be repeated. The Municipal Act, however, provides for the appointment of AUDITORS, persons qualified to be councillors, but not actually of that body, lest identity of interest might lead to partiality in the exercise of their functions. The accounts are to be audited half-yearly, on the 1st of March and the 1st of September, and the Treasurer is, after the September audit, to make out and cause to be printed a full abstract of the accounts for the year, a copy of which is to be open to all the rate-payers; and copies are to be delivered to such rate-payers as apply for them, on payment of a reasonable price.

If the constituency be sufficiently large and have interests identical with that of the community, and if the duties of the governing body be well defined and subject to effective checks, the mode of election is of minor importance. Nevertheless it was important that the mode in which the functionaries were to be elected, should be calculated to give to the constituency the utmost opportunity to exercise effectively the franchise with which they are invested.

The qualification of a councillor is chiefly a property qualification, varying in boroughs according to their amount of population. In this it may again appear that property was too exclusively regarded, for when security was provided for a constituency qualified by property, it might have been presumed that in their choice of officers, if it were left completely free, they would not, when all other qualifications of candidates were equal, prefer the candidate without property. It may, it is presumed, be left to people of property to choose amongst all classes of persons, without fear that they will choose those whose circumstances or opinions would prompt them to place the tenure of property in danger. The bill was introduced without the provision of a qualification for councillors, which was inserted after the bill left the Commons. This qualification renders necessary the enactment of penalties for serving without being qualified. No person is eligible as councillor unless entitled to be on the burgess list, nor unless seised or possessed of real or personal estate, or both, as follows: in all boroughs divided into four or more wards, 1000*l.*, or rated to the poor upon the annual value of not less than 30*l.*; and in all boroughs divided into less than four wards, or not divided into wards, of 500*l.*, or rated to the poor at 15*l.* No minister of religion is capable of being elected a councillor (§ 28).

One-third of the council is to be elected annually on the 1st of November, when one-third of the members, those longest in office, go out. This provision was made, in order that a majority of experienced officers might always remain in the council. The practice combining the advantages of an annual infusion of officers recently approved by the constituency, and thus indicating its sentiments, as well as that of securing experience and acquaintance with the detail and routine of business, has in every case, where it has been tried under fair circumstances, been found most salutary.

Practically, the determination of the constituency, and of the functions of the council, and the checks on their exercise, comprise the whole of the material provisions of the act, the rest is merely incidental to these. Accordingly, the rest of the officers and their functions will be rapidly enumerated.

The *Mayor* is elected from the councillors, and when elected must serve, or pay a fine of 100*l.* His qualification is that of a councillor, but if he acts, not being qualified, he is liable to a fine of 50*l.* He presides at the meetings of the council, and has precedence in all places within the borough, but he has few other exclusive functions or privileges. With the assessors he revises the lists of the constituency, which he must sign in open court. He also presides with the assessors at the election of councillors. He is during his continuance in office a justice of peace for the borough, and continues such for the succeeding year. In bo-

roughs returning members to parliament, he is made the returning officer at their election. He is also rendered capable of doing in such borough any act which the chief officer in any borough may before lawfully do, so far as the same may be consistent with the provisions of the present act.

The *Aldermen* are officers introduced into the new corporations by the amendments made in the bill by the Lords. Their duties are undefined, and indeed they seem to be little more than councillors having a title of precedence. They are elected by the council itself from the councillors, or persons qualified to be councillors. They consist of one-third of the number of councillors. They cannot be elected coroner or recorder, and are exempted from serving on juries. They hold office six years, one half going out every three years. And it is therefore provided that during the respective offices of the mayor and aldermen they are to continue members of the council, notwithstanding the provisions as to the councillors going out of office at the end of three years. [ALDERMAN.]

The *Town-Clerk* acts in obedience to the directions of the council, and for which the latter will be responsible. Besides the general and implied duties of the office, such as preserving minutes of the transactions of the council, some special duties are cast on him by the act; these are chiefly that of making out the 'Freemen's Roll,' keeping and publishing the 'Burgess List,' and making out 'Ward Lists' of the same. He is made responsible for the safe keeping of all charter deeds and records. He is subjected to various fines in case of neglect of duty, and is disqualified to act as auditor. He is bound to submit accounts of all money and matters committed to his charge, at such times and in such manner as the council may direct.

A *Treasurer* is required to be appointed by the council, of which he is not to be a member. He is to give security for the proper discharge of his duties. He is to keep accounts of all receipts and disbursements, to be open to the inspection of aldermen and councillors. He is to pay no money except by order, in writing, of the council, and is to submit his accounts with vouchers half-yearly to—

The *Auditors*, who are to be two in number, elected by the burgesses annually, on the 1st of March, in a similar manner as councillors are elected, and from the persons qualified to be councillors. No actual councillor, however, nor the town-clerk, nor treasurer, each of whose accounts he examines, can be elected auditor. His duties sufficiently appear from what has been before stated. [AUDITOR.]

The *Assessors* are two officers to be appointed in every borough, in like manner as auditors. Their duties are to act in conjunction with the mayor in revising the burgess lists at the election of councillors. [ASSESSOR.]

Such is the list of officers necessarily existing in each borough under the provisions of the Act 4 & 5 Wm. IV. c 76. Other officers may be appointed either for general municipal purposes, or under certain circumstances, for the special purpose of the administration of justice.

With regard to the *administration of justice* in boroughs, the Corporation Reform Act made several alterations. In the boroughs named in schedules A and B, the Queen is empowered to appoint as many persons as she may think proper to be *Justices of the Peace*, who are not required to have any qualification by estate. The council also of any borough may, if they think it necessary that one or more *salaried Police Magistrates* should be appointed, make a by-law fixing the amount of salary, and thereupon the queen may appoint such person as she may think fit, so that the person be a barrister of five years' standing. The appointment is given to the Crown in order that the administration of justice may be above the suspicion of being tainted by party or local interests, a suspicion which might be incurred, and even deserved, were the appointment made by the council. The justices of the peace may appoint a clerk, with respect to whom some useful provisions will be found in § 102.

In boroughs where the council shall signify their desire to that effect by petition, setting forth the grounds of their

application. the state of the gaol, and the salary which they are willing to pay, the Crown may appoint a Recorder for any one such borough, or for any two or more boroughs conjointly. The Recorder must be a barrister of not less than five years' standing. He is, by virtue of his office, a justice of the peace of the borough, and is to have precedence within the borough next after the mayor. Such boroughs will have separate courts of Quarter-Sessions of the Peace, which is to be a court of record having cognizance of all crimes, offences, and other matters cognizable by any court of quarter-sessions for counties, the recorder being enabled to do all things necessary for exercising such jurisdiction, notwithstanding his being the sole judge.

The council appoint the clerk of the peace, when a separate court of quarter-sessions is granted.

Towns which are not incorporated may obtain a charter of incorporation by petition to the Privy Council. (1 Vict. c. 78, § 49.) Manchester, Birmingham, Sheffield, and Bolton have been incorporated under this regulation.

By § 139 all advowsons, rights of presentation or nomination to any benefice or ecclesiastical preferment in the gift of the corporate body were required to be sold under the direction of the Ecclesiastical Commissioners; the proceeds to be vested in government securities and the annual interest carried to the account of the borough fund.

The management of charitable trust funds was taken from municipal bodies by § 71: the administration of such funds is now placed in the hands of trustees who are appointed by the Lord Chancellor.

Ireland.—The borough system of Ireland may be described in general as an immediate branch from that of England, and the mode of incorporation adopted by the crown in erecting the modern boroughs, presents little more than a parallel to the course it was pursuing in England. The completion of the territorial conquest, while it relieved the ancient boroughs from the danger of external attack from the unsubdued native Irish population, rendered their internal freedom more liable to attack from the English crown. Since the permanent establishment of the Church of England reformation, there has been the difference not of *races*, but of *creeds*. James I. sent presidents or military governors through the Irish provinces for the immediate enforcement of the statutes relating to the crown's supremacy and to the uniformity of common prayer, especially in the corporate towns. On arriving at these towns they called before them the mayors and other principal corporate officers, and, after some further proceedings, deposed them, imprisoned them during his majesty's pleasure, imposed on them heavy pecuniary penalties, and for payment of these had their goods sold in the public streets. The leading municipal officers being thus ejected, others, of known pliancy, were substituted in their places; and these persons readily resigned the rights and liberties of their towns into the king's hands, and took out new charters of incorporation. And here it was that the leading object of the crown was accomplished. To the several ancient boroughs new charters were soon issued, so framed as to leave but a very small share of municipal power to the great body of the inhabitants. In these charters individuals were expressly nominated to fill the offices of mayor, sheriff, recorder, &c.: the members of the governing council of the corporations were in most instances nominated in like manner, with exclusive power to appoint their successors; so that the inhabitants at large were almost wholly deprived of that share in their local government, which, under the original constitutions of these boroughs, they had enjoyed for upwards of four centuries.

The spirit of absolute exclusion prevailing in the Irish municipalities was mitigated in some degree by the Act of Explanation, which empowered the Lord Lieutenant and Council, within seven years, to make rules, orders, and directions, for the better regulation of all cities, walled towns, and corporations. By virtue of this power, the Lord Lieutenant and Council, in 1672, issued what are called the "New Rules." That part of these New Rules which tended to re-

store the ancient basis of the municipal franchise, was a provision that all resident "foreigners, strangers, and aliens, being merchants, or skilled in any mystery, craft, or trade," were entitled to their freedom. Thus, in spite of the exclusive system then in operation, every resident trader in the corporate towns of Ireland was enabled to become a freeman; though still, except by special dispensation, he could not fill the higher municipal offices, unless by taking the oath of supremacy and giving the other tests then required. But after the Revolution of 1688 the spirit and intention of this portion of these rules were wholly disregarded.

The inquiry into the state of the municipal corporations of Ireland, commenced in 1833, was a branch of the general municipal inquiry which naturally followed the passing of the parliamentary Reform Acts. The Irish Commissioners took as the basis of their local investigations the 117 places which sent representatives to the Irish parliament. Their report showed that in Ireland the total inadequacy of the basis of municipal constituency was yet more universally glaring and more injuriously operative than it was in the unreformed system of England. They especially pointed to the excessive abuse of the unlimited power of admitting non-residents into the local constituency. In 1747 the political spirit of the time induced the legislature, by statute 21 Geo. II., chap. 10, sec. 8, of the Irish parliament, to dispense with residence as a qualification for corporate offices in all but a very few of the Irish corporations. The effect of this enactment was to deprive a large proportion of the corporations of a resident governing body. In some cases, a few, very rarely a majority, of the municipal council, were inhabitants of the town; while in others, the whole chartered body of burgesses became composed of non-residents, some of whom attended, *pro formâ*, at elections of the corporate officers and of the parliamentary representatives, or on occasion of the disposing of corporate property, though taking no other part in the local government. In addition to so many other fertile sources of perversion, some charters gave a direct control in the corporate elections to the lord of the manor or landed proprietor of the town in which the corporation was established; while in others, the powers given to a small self-elected body became naturally centred in its most influential member. With few exceptions, the influence once acquired by persons of rank or property in the corporations was easily perpetuated by the powers of self-election in the governing councils, until by degrees the corporate bodies became, as many of them had long been, composed almost exclusively of the family or immediate dependents and nominees of the individual recognised as the "patron," or "proprietor;" acting solely according to his dictation and for his purposes, in the election of the municipal officers, the administration of the corporate affairs and property, and the returning of the members of parliament for the borough. The influence thus acquired came to be regarded as absolute property, and transmitted as part of the family inheritance: in some instances it was made the subject of pecuniary purchase; in some, as in the case of Waterford, partitioned, by agreement, between contending interests; and when the legislative union between Great Britain and Ireland deprived many of the corporate towns, or rather their patrons or proprietors, of the power of returning members to parliament, this species of property was formally recognised as a subject of national compensation.

The Commissioners of Inquiry remark, in relation to the return of members of parliament, that in far the greater number of the close corporations the persons composing them were the mere nominees of the "patron" or "proprietor" of the borough: while in those apparently more enlarged they were admitted and associated in support of some particular political interest, most frequently at variance with that of the majority of the resident inhabitants. "This system," they observe, "deserves peculiar notice in reference to your majesty's Roman Catholic subjects. In the close boroughs they are almost universally excluded from all corporate privileges. In the

more considerable towns they have rarely been admitted even as freemen; and, with few exceptions, they are altogether excluded from the governing bodies. In some—and among these is the most important corporation in Ireland, that of Dublin—their admission is still resisted on avowed principles of sectarian distinction. This exclusive spirit, the commissioners added, operates far more widely and more mischievously than by the mere denial of equal privilege to persons possessing perfect equality of civil worth; for in places where the great mass of the population is Roman Catholic, and persons of that persuasion are, for all efficient purposes, excluded from corporate privilege, the necessary result is, that the municipal magistracy belongs entirely to the other religious persuasion; and the dispensation of local justice and the selection of juries being committed to the members of one class exclusively, it is not surprising that such administration of the laws should be regarded with distrust and suspicion by the other and more numerous body.

The evils of the Irish municipal system have been mitigated by the Act for Parliamentary Reform in Ireland, and by an act passed in 1840 (3 & 4 Vict. c. 108), "for the regulation of municipal corporations in Ireland." The existing corporations were placed in schedules and dealt with in the following manner. Schedule A contained the following ten places: Belfast, Clonmel, Cork, Drogheda, Dublin, Kilkenny, Limerick, Londonderry, Sligo, and Waterford; which are all continued as corporations, subject to the provisions of the Act, under the title of mayor, aldermen, and burgesses (in Dublin the title of Lord Mayor is retained). Schedule B contained thirty-seven places, which were classed in two divisions, namely, those corporations (19) which possessed estates or funds producing not less than 100*l.* a-year, and those (18) which were not possessed of property to the above amount. All these thirty-seven boroughs were dissolved, but the act provided that any of them which had a population exceeding 3000 might obtain a charter of incorporation similar to that of the charters enjoyed by the ten boroughs in Schedule A, upon petition by a majority of the inhabitant rate-payers to the Queen in council. In the other towns in Schedule B another arrangement was adopted; in some of these towns commissioners for lighting, cleansing, watching, &c. had been elected under 9 Geo. IV. c. 82, and in this case the corporate property was vested in the commissioners, to be applied by them in aid of the rates levied, and for the public benefit of the inhabitants. The places where the 9 Geo IV. c. 82, had not been adopted, and where, consequently, no commissioners existed, were arranged in two schedules, and in the towns in the first schedule a board of commissioners was to be elected in the proportion of one commissioner for every 500 inhabitants, in whom the corporate property was to be vested, subject to the trust already mentioned; and in the towns in the second schedule the corporate property was to be vested in the guardians of the poor of the union in which such borough or the larger part of it was situated. But if any of the boroughs in these two schedules elect commissioners under 9 Geo. IV. the corporate property is to be vested in them; or if they obtain a charter of incorporation, then in the corporation. Schedule I contained twenty boroughs, the corporations of which were dissolved by the act, and the corporate property vested in commissioners under 9 Geo. IV., or in the poor-law guardians as already detailed.

The persons qualified to vote for corporate officers, or for municipal commissioners in the towns in schedule B, are, each male of full age who on the last day of August in any year is an inhabitant householder, and has been resident for six calendar months preceding within the borough, or within seven statute miles thereof, and who shall occupy any house, warehouse, counting-house, or shop, which, separately or jointly with any land occupied by him therewith as tenant or as owner, shall be of the yearly value of not less than 10*l.* ascertained according to the directions of the act. Several of the provisions of the act resemble the provisions of the English Municipal Reform Act.

MURDER. In the earlier periods of English jurisprudence, murder, *murdrum*, was a term used to describe the secret destruction of life, witnessed and known by none besides the slayer and any accomplices that he might have. *Murdrum* was also the name of a pecuniary penalty imposed, until the reign of Edward III., upon the county or district in which such a secret killing had taken place. One of the modes of escaping from this penalty was, a presentment of Englishry; in other words, a finding by the coroner's inquest, upon the statement of the relations of the deceased, that he was an Englishman; the sole object of the amercement having been the protection of Danes, and afterwards of the Normans, from assassination by the English. (Glanville; Reeves.) By the grant of 'murdra,' which is commonly found in ancient charters of franchises, the right to receive these amercements within the particular districts, passed from the crown to the grantee. Amercements for non-presentment of Englishry were abolished in 1340, by 14 Edw. III. st. 1, c. 4.

As the law formerly stood, every destruction of human life, not effected in this secret manner, with whatever circumstances of malignity and cruelty it might be accomplished, was treated as simple homicide. As the law now stands, murder is the destruction of human life, accompanied with an intention to kill, or do great bodily harm, or wilfully to place human life in peril; or resulting from an attempt to commit some other felony; or occurring in the course of resistance offered to ministers or officers of justice, or others rightfully engaged in carrying the law into execution. All other cases of culpable homicide, in which death is produced involuntarily, but is occasioned by want of due caution; or where, though death is produced voluntarily, the crime is extenuated by circumstances; or where a minister or officer of justice is killed, but sufficient authority did not exist, or was not communicated to the party before the fatal blow was given; or where any other circumstances essential to the crime of murder are wanting—amount only to simple felonious homicide, or, as it is commonly called, without regard to the age or sex of the party killed, Manslaughter.

In the modern law of England the crime of murder is characterised by having been committed with malice aforethought, or, as it is sometimes called, malice *prepense*. But the term "malice aforethought" is frequently applied to a state of things in which there is no malice in the ordinary sense of the term, but is only malice in a legal sense. If A shoots at B with intent to kill him, but by mere accident kills C, this is a killing from implied malice. If A, by throwing a heavy stone from the roof of a house into the street in which he knows that people are continually passing, kills B, a mere stranger, this also is a killing from implied malice.

Implied malice is however very loosely defined in the law of England, if it can be said to be defined at all. It is stated, that the existence of implied malice is a pure question of law, or a conclusion of law to be drawn from all the circumstances of the case; and it is in some cases made to depend upon a very abstruse technical doctrine. The existence or non-existence of a criminal intention, even where that intention has no reference to any personal injury, but happens to be accompanied with a killing which is altogether accidental, is made to constitute the distinction between the higher and lower species of culpable homicide; and in other cases the existence of such criminal intention brings even an accidental killing within the scope of manslaughter.

Every homicide is presumed to be malicious until the contrary be shown. But circumstances may extenuate the offence, and reduce it from the crime of murder to that of manslaughter; or the act may appear to amount either to justifiable or excusable homicide. In cases of justifiable homicide, and, according to modern practice, in cases of excusable homicide, the party causing the death is discharged from responsibility.

To constitute legal homicide, the death must result from injury to the *person* (as contradistinguished from causes operating upon the *mind*) occasioned by some act done by, or some unlawful omission

chargeable upon, the party to whom such homicide is imputed. The terms "wilful omission" apply to every case of non-compliance with a legal obligation which the party may be under, to supply food, clothing, or to furnish any other assistance, or to do any other act, for the support of life or for the prevention of injury to it. It is not homicide unless death take place within a year and a day after the injury; or, in other words, it is not considered homicide when the party injured survives a whole year, exclusive both of the day of the injury and of the day of the death; nor where the death is to be attributed to unskilful treatment, or other cause not resulting from or aggravated by the injury sustained.

The law of homicide applies to the killing of aliens, except alien enemies killed in war; to felons, except when executed according to law; and to persons outlawed, whether on civil or on criminal process. But a child *in venter sa mere* (in its mother's womb) is not a subject of homicide, unless, subsequently to the injury, it be born alive, and die within a year and a day from its birth, from the injury received whilst unborn.

Criminal homicide is one of three kinds, murder, manslaughter, and self-murder or suicide.

I. Murder is committed by:—

1. Voluntary homicide, without circumstances of justification, excuse, or extenuation.
2. Involuntary homicide, resulting from the commission of a felony, or from an attempt to commit felony.
3. Homicide, whether voluntary or involuntary, committed in unlawfully resisting officers or ministers of the law, or other persons lawfully acting for the advancement or in the execution of the law.

II. Manslaughter consists in:—

1. Voluntary but extenuated homicide, committed in a state of provocation, arising from a sufficient cause.
2. Involuntary homicide, not excused as being occasioned by mere misadventure.

This second class may be subdivided into:—

1. Involuntary homicide, resulting from some act done, or from the wilful omission to do some act, with intent to occasion bodily harm.
2. Involuntary homicide, resulting from some wrongful act done to the person.
3. Involuntary homicide, in committing, or in attempting to commit, an offence attended with risk of injury to the person.
4. Involuntary homicide, resulting from some act done without due caution, or from the unlawful omission to do some act.

Homicide not criminal is:—

1. Justifiable, as done for the advancement or in the execution of the law; or
2. Excusable, as done for the defence of person or property; or because it has, without the fault of the party, become necessary for his preservation.

The offence is extenuated where the act, being done under the influence of sudden provocation, or of fear, or of alarm, which may, for the time, suspend or weaken the power of judgment and self-control, is attributable to transport of passion or defect of judgment so occasioned, without any deliberate intention to kill or do great bodily harm; regard still being had to the nature and extent of violence used by the party inflicting the injury which causes death, as compared with the cause of provocation. The offence is not extenuated where the cause of provocation is slight, and the killing cannot be attributed to mere heat of blood arising from the provocation given.

Homicide is neither justified nor extenuated by reason of any consent given by the party killed, as in duels. [DUEL.]

Homicide is justifiable where the act is done in a lawful manner, by an officer or other person lawfully authorized in execution of the sentence of a court of competent jurisdiction.

Homicide is justifiable where an officer of justice, or other person duly authorized to arrest, detain, or imprison for any felony or for any dangerous wound

given, and using lawful means for the purpose, cannot, otherwise than by killing, overtake the party in case of flight, or prevent his escape from justice; provided the officer knew, or had reason to believe, that the party attempting to escape was aware that he was pursued for such felony or wound given.

Also, where any officer of justice, or other person lawfully executing in a lawful manner any civil or criminal process, or interposing in a lawful manner for the prevention or suppression of any breach of the peace of other offence, is unlawfully and forcibly resisted, and using no more force than is necessary to overcome such resistance, happens to kill the party resisting; or being, by reason of the violence opposed to him, under reasonable fear of death if he proceed to execute his duty, and because he cannot otherwise both execute his duty and preserve his life, kills him who so resists—in either of these cases the homicide is justifiable.

Homicide is also justifiable when necessary for preventing the perpetration of any felony attempted to be committed by violence or surprise against person, habitation, or property; and where one, in defence of moveable property in his lawful possession, using no more force than is necessary for the defence of such property against wrong, happens to kill the assailant; or being, from the violence of the assailant, under a reasonable and *bonâ fide* apprehension that he cannot otherwise both defend his property and preserve his life, kills the assailant; also where one in lawful possession of house or land, after requesting another, who has no right to be there, to depart, is resisted, and using no more force than is necessary to remove such wrong-doer and retain his possession, happens to kill such wrong-doer; or being, from the violence with which such wrong-doer endeavours to deprive him of possession, under reasonable and *bonâ fide* apprehension that he cannot otherwise both maintain possession and preserve his life, kills such wrong-doer.

Homicide is excusable, when a man is involuntarily placed in such a situation that he is under the necessity of killing another in order to save his own life: as where, in a shipwreck, A pushes B from a plank which can save one only.

Homicide is not criminal when it occurs in the practice of any lawful sport or exercise with weapons not of a deadly nature, and without intent to do bodily harm, and where no unfair advantage is intended or taken. But it amounts to manslaughter where weapons are used the use of which is attended with probable danger; or where, in case of friendly contest, without the use of such weapons, death results from any unfair advantage taken, either as regards the nature of the instrument, the mode of using it, the want of due warning given previously to violence used, or from any want of due caution.

The statute of 9 Geo. IV. c. 31, § 3, enacts, that every person convicted of murder or of being accessory before the fact to murder shall suffer death; and that every accessory after the fact to murder shall be liable, at the discretion of the court, to be transported for life, or to be imprisoned, with or without hard labour, for any term not exceeding four years. By an act passed in 1752 (25 Geo. II. c. 37) the bodies of persons executed for murder were directed to be delivered to surgeons to be dissected, or to be hanged in chains. [ANATOMY ACT.] The 2 & 3 Wm. IV. c. 75, required that such persons should be hung in chains, or buried within the precincts of the prison. The 4 & 5 Wm. IV. c. 36, § 1, has taken away one part of the alternative, and the mode of burial is the only circumstance which distinguishes sentence upon a conviction for murder from those pronounced in other capital cases. Formerly the murder of a bishop, abbot, or prior, by a person owing him canonical obedience, of a master or mistress by a servant, or of a husband by his wife, was denominated petty treason, and punished with greater severity than other murders. The party was drawn to the place of execution; and if the offender was a woman, burning was, as in the case of high treason, substituted for hanging; but by the 9 Geo. IV. c. 31, § 2, petty treason is treated as murder only.

The offence of manslaughter is punishable with transportation for life, or for

not less than seven years, or with imprisonment with or without hard labour, not exceeding four years, with fine, by 9 Geo. IV. c. 31, § 9. (Foster; East; *Fourth Report of Criminal-Law Commissioners.*) [LAW, CRIMINAL.]

MUTINY ACT, the, is a series of regulations which, from year to year, are enacted by the Imperial Parliament of Great Britain for the government of the military force of the country.

Laws have, at various times, been made by the authority of the crown for the maintenance of discipline in the army when in garrison, on a march, and in the presence of an enemy; these may be seen at length in Grose's 'History of the English Army' (vol. ii.); but the code which is now in use is one of the first-fruits of the Revolution in 1688. Previously to that event the crown, except during the Civil Wars and the subsequent Protectorate, had, at least practically, the supreme power over the militia (that is, over the whole military force), which, with or without the consent of the nation, might be called out and employed as long as pay and quarters could be obtained for the troops. But the efforts then recently made to maintain and extend the power in the crown, joined to the increasing jealousy of the people for their civil and religious liberties, led the two houses of parliament to take the earliest opportunity, after the new king had been called to the throne, of expressing in some act of legislation their authority over the regular troops of the nation; and an opportunity almost immediately presented itself, on a serious act of mutiny taking place in the army. The Royal Scotch and Dumbarton's regiments, under Marshal Scomberg, in their progress to the coast for the purpose of being embarked for Holland, being quartered at Ipswich, a large body of men, refusing to proceed to their destination, disarmed their officers, seized the military chest, and, with four pieces of cannon, began their march for Scotland. Being pursued by General Ginckel, with three regiments of Dutch dragoons, they surrendered at discretion; but, in consequence of this event, an Act was immediately passed (April 12th, 1689) by which the army was put under the control of the law with respect to discipline, and under its protection with respect to pay and quarters.

The enactments of this bill were particularly directed against mutiny and desertion, for which the bill was immediately required; but the Act itself begins by laying down as maxims that the raising or keeping a standing army in the country in time of peace, unless it be with the consent of parliament, is against law; and that no man can be forejudged of life or limb, or subject to any kind of punishment, in any other manner than according to the established laws of the realm. It then states that it is judged necessary by their majesties and their parliament, during the present time of danger and for the defence of the Protestant religion, to continue and augment the forces which are now on foot.

Avoiding the acknowledgment that any power exists in the crown for the appointment of courts-martial, the act authorises their majesties to grant commissions to general officers to assemble such courts for the purpose of trying and punishing such offences as mutiny and desertion. Provisions are also made that nothing in the Act shall exempt an officer or soldier from the ordinary processes of law; that it shall not concern the militia troops, and that it shall only continue in force till the 10th of November in the same year. The Act has ever since, with one exception, been annually renewed; after the bill which passed in April, 1697, for one year as usual, had expired, no other was passed till March, 1702; and on a few occasions, the bill has been suffered to expire for several days before the following one received the royal assent.

The Mutiny Act has varied in many particulars from that which was first passed, but it has been uniform in all its principal points; such as the dependence of a standing army on the consent of parliament, and the subjection of military men to all the processes of ordinary law. Instead however of the original formula above mentioned, by which the reason of keeping up a military force was expressed,

the Act now asserts that it is judged necessary by the crown and parliament to continue a body of forces (the number being exactly specified) for the safety of the United Kingdom and the preservation of the balance of power in Europe. In all the Acts which passed down to the commencement of Queen Anne's reign the articles were few in number, and some of them were very ill defined. But in Anne's reign many new articles were inserted; others have since been added, as the want became apparent; and the Mutiny Act may now be considered as a good general code of law, in which are defined strictly but briefly all military offences of the higher class, and, as precisely as possible, nearly all those of minor importance. The military offences of the higher class, thirteen in number, consist in a commissioned or non-commissioned officer, or a soldier, exciting mutiny, or not using his best endeavours to suppress it; in misbehaving before an enemy; abandoning or delivering to the enemy any garrison, fortress, or post; compelling or using means to induce the governor of such garrison to do so; quitting his post without leave, or sleeping at his post; holding correspondence with the enemy, or entering into terms with the enemy without licence; striking a superior officer, or disobeying his lawful commands; and, finally, in deserting the service. For all these offences the Act prescribes "death, or such other punishment as a general court-martial shall award." A clause of the Act enumerates the military offences of minor importance which may be tried before a district or garrison court-martial: these consist in a non-commissioned officer or soldier wilfully maiming himself, or tampering with his eyes; malingering, or feigning disease; stealing government stores; stealing from an officer or a comrade; procuring false accounts; embezzling public money; and, lastly, in any fraudulent or disgraceful conduct. For these offences may be awarded corporal punishment. imprisonment, forfeiture of the additional pay to which, for length of service, the individual might be entitled, and forfeiture of pension on being discharged. And in another clause it is stated that imprisonment, with or without hard labour, or solitary confinement, may be awarded by regimental courts-martial for drunkenness, or insubordination on parade or on the line of march.

Beside the above laws, which relate particularly to the discipline of the army, the Act defines the constitution and powers of courts-martial; it contains clauses relating to the enlistment of recruits, the issue of pay and marching money, the quartering of soldiers, and the supplying of carriages for the conveyance of troops and baggage The Act moreover contains a repetition of the original clause in which it is declared that the ordinary course of law is not to be interfered with when a soldier is accused of a capital crime; and it states that a man cannot be taken from the service for a debt under 30*l.*

The Mutiny Act is declared to be applicable to all persons employed in the recruiting service; to the forces of the East India Company while in any part of the United Kingdom, and till their arrival in the territories of the Company; to the officers and men employed in the service of the artillery and engineers; in the corps of sappers and miners; to the military surveyors and draughtsmen in the ordnance department; and to foreign troops serving in any part of the British dominions abroad. Its provisions are also stated to extend to the islands of Guernsey, Jersey, Alderney, Sark, and Man. In one of the clauses it is expressly mentioned that nothing in the act extends to any of the militia forces, or yeomanry, or volunteer corps in Great Britain or Ireland; it is understood, however, that its provisions are applicable to the corps of marines when on shore, and also to officers holding rank by brevet, though not to such as are on half-pay. An effort was made in 1749, when the bill was introduced as usual into parliament, to subject officers of this class to martial law, but the clause was abandoned by the minister. Before the union of Ireland with Great Britain there was a separate Mutiny Act for the former country, but now the same act applies to both. The officers and

troops of the East India Company are subject to their own Mutiny Act, which, however, agrees exactly with that of the government forces.

Previously to the year 1750 the members of courts-martial were bound by an oath not to disclose the ground on which they gave their votes; but in that year the act was so far mitigated as to release them from such oath when required to give evidence in any court of justice or court-martial. The power of disclosing, in that case only, the votes or opinions given is implied in the forms of the oaths which are now taken by the judge-advocate and members of the court-martial, and which are printed among the schedules to which the act refers. The act of the same year also contains a clause, in which it is stated that no sentence pronounced by a court-martial, and signed by the president, shall be more than once revised; previously to that time a general officer had power to order the revisal of any sentence as often as he pleased, and thus he might retain in confinement a man who had been acquitted on a fair trial.

The gradual extension of the provisions of the Mutiny Act to those military offences which may be considered as secondary in the scale does not seem to have been noticed on behalf of the crown further than by the occasional reservation of its right to make Articles of War for the better government of the forces, which is expressed in the acts passed during the reign of Queen Anne. In the first year of George I. this right of the crown was formally allowed; and the clause containing it has been repeated in all subsequent mutiny acts, with the provision that no person within the United Kingdom and British Isles shall be subject to transportation, or to any punishment affecting life or limb, for crimes specified in the Articles of War, except such as by the Mutiny Act itself are liable to the same punishments.

The Articles of War which are at present in force, and which have from time to time been promulgated, are divided into twenty-four sections. Many of these correspond exactly to clauses in the Mutiny Act; others, though relating to subjects in the latter, define the particulars of the crime and the punishment applicable to it with more precision; and there are articles which have no counterparts in the act. The first section of the Articles of War relates to divine worship, frequent attendance on which is prescribed, and punishments are awarded for profaning the places in which it is celebrated, as also for scandalous or vicious behaviour in a chaplain. The seventh section contains fifteen articles relating to quarrels and the sending of challenges; and the fourteenth contains twenty-one articles concerning the duties of troops in quarters or in the field. Many of these articles prescribe for the offence "death, or such other punishment as a court-martial may award;" and two of them prescribe death, without leaving any discretion to the court. The first of the crimes here mentioned is that of doing violence to persons bringing provisions to the camp, and the other is that of ill-treating a person to whom a *safe conduct* has been granted; the army in both cases being on service in foreign parts. The fifteenth section settles the relative rank of officers in the regular army; and the twenty-second the rank of officers in the royal army and in that of the East India Company, when serving together. The twenty-third section appoints that officers and soldiers while employed on board any ships having a royal commission shall conform to the laws and regulations established for the government and discipline of the navy.

The above articles, being made by the crown as head of the army, or by the commander-in-chief, are to be obeyed as being the commands of a superior officer; but the writers on military law observe that the legality of the articles may itself become the subject of examination in a court-martial, whereas the Mutiny Act must be obeyed without inquiry. In this particular therefore the Articles of War are to be distinguished from the Act; and whatever case may occur, the letter only of the law, as contained in the Act must be followed in awarding the punishment due to a crime affecting life.

The bill on which are founded the Articles of War for the Navy was passed

in the 22nd Geo. II., and this consolidated all the laws previously made for the government of the ships and vessels bearing royal commissions, as also of the forces at sea. Among the offences which in the Act constitute the crime of mutiny, are the running away with the ship, or with any ordnance, ammunition, or stores belonging to the same; neglect of duty, joining in or using means to produce any mutinous assemblage of persons, uttering mutinous or seditious words, or concealing any mutinous intention, and striking an officer or disobeying his lawful commands. Of the thirty-six articles, nine relate to crimes for which the punishment of death, without discretion in the court-martial, is awarded; and there are twelve to which are assigned "death, or such other punishment as the nature and degree of the crime shall be found to deserve." Two of these were originally in the former class, and the qualifying clause was added in the 19th Geo. III. Except this alteration, none has been made in the navy act since it was passed.

N.

NATIONAL ASSEMBLY. [STATES-GENERAL.]

NATIONAL DEBT. If we bring into account the wealth possessed by her citizens individually, England is the richest country in Europe. The amount of her public debt, on the other hand, so infinitely beyond the debt of any other state, would seem to indicate that, considered apart from that individual wealth, England is the poorest of nations. But the national debt is owing by the aggregate of the people—*by the nation*—for whose benefit, real or supposed, it was contracted. It suits the general convenience, including that of the public creditor, that the nation, in its aggregate sense, should thus continue to exhibit signs of poverty in contrast with the evidences of enormous wealth; but if it were otherwise—if the public convenience, still more if the public safety, demanded such a course, the same authority which sanctioned the contracting of the debt could also oblige each individual in the country to contribute according to his means towards its extinction. It would be difficult to imagine any circumstances that could render such a course expedient, and the position has been here advanced solely with the object of explaining, in a familiar way, the nature of the debt, and the manner in which the obligation to bear the burthen and contribute towards upholding the national faith presses upon every individual. Every one is interested in forming a correct idea concerning a matter which exercises an influence upon every circumstance that affects his social position and progress. Yet it is by no means uncommon to find persons who suppose the national debt to be a fund, a deposit of treasure, a sign of national riches; anything in short opposed to that which it really is, namely, a drawback upon the national wealth, a mortgage of the national industry for the payment of a perpetual annuity in return for capital advanced to meet the national exigencies, and which has been consumed for national objects. It has been said that as this debt, or by far the largest part of it, is owing among ourselves, it cannot have any prejudicial action upon the national interest, since that which a body owes to its own members cannot be considered a debt. It is true that the public expenditure, including its debt, has been furnished by its own citizens, and that our future industry is therefore not mortgaged to strangers, but the portion of its fruits which must be set apart for the public creditors is so much capital which may be productively employed. It will nevertheless easily be made apparent how the successive absorption of private capital for public purposes must prove injurious to a country, if we consider what must have been the condition of England, if, instead of thus absorbing a part only, the whole of the disposable wealth of her individual citizens had been so expended. It might still have been said, that as what was taken from all in the form of taxes was returned to a part in the form of dividends, the money did not leave the country; and that although of course it must affect the condition of individuals, it would not affect the condi-

tion of the aggregate. But, it must be asked, where, in the case supposed, would have been the capital that must set industry in motion and enable the payment of taxes? It is indeed evident that in such case the country must have long ago become bankrupt, and have been unable to hold any rank among independent nations.

The real difference between a private debt and the public debt called the national debt consists in the compound character of the creditors, who as members of the nation are legally and morally bound to contribute towards the maintenance of the public faith, while they have each a personal interest in its preservation. There is also this further distinction between the debts of the nation and those of individuals, that the state has at all times the right to pay off its creditors at par, while the creditors have no right to demand repayment of the principal money, but must content themselves with receiving half-yearly the amount of their annuity.

Another fallacy has been often broached of late years by a small party in the country, namely, that the general prosperity of the state would be advanced by the abolition (unsatisfied) of the public debt; and as in all matters of public policy the prosperity of a great majority should be considered before that of a part, a sound policy requires that faith should no longer be kept with the public creditor. The proposition is here put in plainer terms perhaps than its advocates would use, but this is the substance of their argument.

It has been shown that the money in respect of which the claims of the public creditors have arisen is spent, and that most of those creditors being part of ourselves, living and expending their incomes among us, the evil effects of the debt are limited to the loss of the capital which otherwise would have formed part of the national wealth, and would have been productively employed. But the capital thus lost has all been advanced in times of necessity, in full faith that the conditions promised would be performed by the borrowers; and it would indeed be a day of disgrace that should sanction the securing of any advantage, however great, through the dishonest breach of those conditions. But would any such advantage as has been supposed follow from so dishonest a step? Those who contend that the great majority of the nation would be benefited by the unsatisfied extinction of the national debt, and would urge its extinction on this ground, as being precisely the same ground on which many enactments are made, ought to show that the loss occasioned by such extinction will be confined to the immediate losers, to the comparatively small number of public creditors. But it is easy to show that the loss would not be confined to the immediate losers; and this being the case, it is impossible to prove that such extinction will really benefit a great majority. It might happen that it would in its results benefit only a small minority of the actual generation, or even nobody at all; and the allegation of this possible result is a sufficient answer to the assumption made by the advocates of unsatisfied extinction, that the loss incurred would be confined to the immediate losers, and that there would be a real gain to the great majority of the nation. Such an unsatisfied extinction would in effect be a dissolution of innumerable contracts, on the faithful performance of which depends the happiness of many persons who are not public creditors. It is hardly necessary to remark that the nation would not afterwards find it easy to borrow money from individuals on any reasonable terms for any purpose, however generally useful, or any public necessity, however urgent.

The contracting of the National Debt cannot be said to have been begun before the Revolution of 1688. Even for some few years after the accession of William and Mary the borrowings of the government were for short periods only. The first transaction of this kind of a permanent character arose out of the chartering of the Bank of England in 1693, when its capital of 1,200,000*l.* was lent to the public at 8 per cent. interest. A power of repayment was reserved on this occasion by the crown, but there was no corresponding right of demanding payment on the part of the bank.

So cautious was the parliament in those days of burthening future generations for the exigencies of the present moment, that when the annual income was inadequate to meet the charges of the foreign wars in which the country was engaged, and it became necessary to borrow the deficiency, annuities were granted, not in perpetuity, but for lives and terms of years, the produce of certain duties being mortgaged for their discharge.

This cautious proceeding could not be long continued. The expensiveness of the wars in which the nation was engaged at the end of the seventeenth century made it necessary to incur debts beyond the means of their prompt redemption, and at the peace of Ryswick, in 1697, the debt amounted to 21½ millions. During the next ten years, although the country was again involved in a continental war, its amount was reduced to little more than 16 millions, and the greatest efforts were made to raise money without imposing any lasting burthen on the people. These efforts indeed soon found their limit, and at the accession of George I. in 1714, the debt had accumulated to the amount of 54 millions, an amount which excited great uneasiness and caused the House of Commons to declare itself under the necessity of making efforts for its reduction. In 1717 the debt amounted to 48½ millions, and the annual charge in respect of the same to 3,117,296*l.* A great part of this debt consisted of annuities granted for 99 years, the money obtained for which had varied from 15 to 16 years' purchase.

In the year 1720 the South-Sea Act was passed, authorising the company to take in, by subscription or purchase, the redeemable and unredeemable debts of the nation, the object being to reduce all the debts under one head of account at one uniform rate of interest. In the accomplishment of this scheme the projectors only partially succeeded, while the disgraceful frauds by which the proceedings of the company at that time were marked led to a parliamentary investigation which caused the disgrace of some of the ministers, the chancellor of the exchequer being expelled the House, and committed to the Tower for his share in the plot. This scheme was attempted at the same time with the equally famous Mississippi scheme, which, with a similar object, was projected in France by John Law, under the sanction of the Regent Duke of Orleans.

In 1736 the public debt of England amounted to about 50 millions, but the annual charge had been reduced below two millions. At the peace of Aix-la-Chapelle, in 1748, the national debt exceeded 78 millions, but in the following year the public obtained some relief from the burthen through the lowering of the rate of interest. Little else was done in the way of alleviation at this time, and at the breaking out of the Seven Years' War, in 1756, the debt still amounted to 75 millions. A public writer of some repute, Mr. S. Hannay, says, at that date, "It has been a generally received notion among political arithmeticians, that we may increase our debt to 100,000,000*l.*, but they acknowledge that it must then cease by the debtor becoming bankrupt."

When the Seven Years' War was ended by the peace of Paris, the debt reached 139 millions and the annual charge was 4,600,000*l.* During the twelve following years, a period of profound peace, only 10,400,000*l.* of the debt was discharged. The war of the American Independence raised the debt from 129 to 268 millions, and the annual charge in respect of the same to 9,512,232*l.* So little was done in the way of liquidation during the following ten years, that at the beginning of the war of the French Revolution the debt still amounted to 260,000,000*l.* and its annual charge to 9,437,862*l.* But between 1793 and the peace of Amiens the addition made to the capital of the debt amounted to 360 millions and the annual burthen was increased from 9,437,862*l.* to 19,945,624*l.* Between the recommencement of the war in 1803 and its termination after the battle of Waterloo in 1815, there were added 420 millions to the capital of the debt, which then amounted, including the unfunded debt, to 885 millions, and the annual charge upon the public exceeded 32 millions of money.

A plan for the gradual extinction of the national debt by the establishment of

a Sinking Fund was proposed and partially applied in 1716 by Sir R. Walpole. The scheme for that purpose proposed under the same name by Mr. Pitt in 1786 had a greater show of reality about it. By this scheme the sum of one million was annually set apart from the income of the country towards the extinction of its debt. Other sums were rendered available for the same purpose, and it was supposed that at the expiration of 28 years the annual income of the sinking fund would amount to four millions, a part of which might then be applied towards relieving the burthen of the public. So far the project bore the stamp of reasonableness and prudence: had the fund of one million annually assigned to commissioners been an actual surplus of income over expenditure, its operation must speedily have been highly advantageous to the country. The fallacy consisted in this, that the sums devoted to it were borrowed for the purpose. The only real advantage secured by this means arose from the unfounded confidence which it imparted to the public, under which they willingly bore a higher rate of taxation than might have been tolerable but for the expectation of future relief through its means. Now that the absurdity is acknowledged of borrowing in order to pay off debt, which absurdity would in the case of an individual always have been apparent, it is difficult to account for the blindness with which the whole nation clung to this so called fund as the certain means of extinguishing the debt, which in effect it contributed to augment through the less advantageous terms upon which the money was borrowed than those upon which an equivalent amount of debt was afterwards redeemed. The difference between the average rates at which money was borrowed and at which purchases were made by the Commissioners who managed the sinking fund between 1793 and 1814 was such, that through the operations of the fund, upon which such confident hope of relief was placed, the country owed upwards of 11 millions more at the end of the war than it would have owed but for those operations. At the period just mentioned the annual income of the sinking fund amounted to 13,400,000*l.*, arising from dividends on stock purchased by the commissioners with funds borrowed at a higher rate of interest for the purpose. It was impossible, however, during a time of peace to raise by means of taxes so large an amount, in addition to the actual current expenditure of the country and the interest upon the unredeemed portion of the debt. During the war, when the deficiency of income was covered by yearly loans, the fallacy was not quite so apparent as it now soon became, for a few years after the peace the deficiency in the public income was borrowed from the sinking fund commissioners by parliament, a course which served to render the absurdity only the more apparent, and in 1824 the plan of keeping up a large nominal sinking fund in the absence of actual surplus income was abandoned.

The amount of the national debt unredeemed on the 5th of January, 1816, was stated to be as follows in the fourth Report of the select committee of the House of Commons on public income and expenditure:—

3 per cent. stock .	£580,916,019
3½ ,, .	10,740,013
4 ,, .	75,725,504
5 ,, .	148,930,403
Perpetual annuities	816,311,939
Terminable annuities, 1,894.612*l.*, equal to an estimated capital of	30,080,347
Unfunded debt . .	38,794,038
Total of unredeemed debt	£885,186,324

The annual charge upon which was:—

Interest upon perpetual annuities	£28,278,919
Terminable annuities .	1,894,612
Interest on unfunded debt	1,998,937
Charge for management paid Bank of England	284,673
Total annual charge	£32,457,141

Experience has now proved that the only important relief from the pressure of debt to be obtained, even during a profound and long-continued peace, will probably be derived from the lowering of

the rate of interest. The price of 5 per cent. stock at the beginning of 1822 was advanced to 6 or 8 per cent. above par, and advantage was taken of this circumstance to induce the holders to exchange each 100*l.* of 5 per cent. annuities for 105*l.* of 4 per cent. annuities. On this occasion 140,250,828*l.* of 5 per cent. stock was cancelled, and 147,263,328*l.* of 4 per cent. stock was created, the annual charge being by this means reduced by the sum of 1,122,000*l.* In 1824 a further saving of 381,034*l.* per annum was effected by reducing to 3½ per cent. the interest payable on 76,206,882*l.* of 4 per cent. stock; and in 1830 a further abatement of one-half per cent. was effected on the 4 per cent. stock created in 1822, whereby the sum of 700,000*l.* per annum was saved to the public.

Some little progress has been made since 1816 in the reduction of debt by the employment for that purpose of actual surplus revenue. An addition was on the other hand made to the debt by the grant of 20,000,000*l.* voted by parliament for compensation to the owners of slaves in the British colonies who were emancipated by the act of 1833. The unredeemed funded and unfunded debt which existed on the 5th January, 1845, and the annual charge thereon, were as follows:—

3 per cent annuities .	£519,303,960
3¼ ,, .	248,701,379
3½ ,, .	2,630,769
5 ,, .	433,749
Perpetual annuities	771,069,858
Terminable annuities, 4,025,210*l.*, equal to an estimated capital of	67,509,670
Unfunded debt . .	18,404,500
Total of unredeemed debt	£856,984,028

The annual charge upon which was:—

Interest on perpetual annuities	£23,719,148
Terminable annuities .	4,025,210
Interest on unfunded debt	552,135
Charge for management	94,886
Total charge	£28,391,379

The following tables show the state of the National Debt at different periods since 1827:

1. Unredeemed Funded Debt and Terminable Annuities in each of the following years, exclusive of the loan raised for compensating the Colonial slave-holders:

1827	£777,476,892	£2,610,754
1830	757,486,996	3,297,375
1834	743,675,299	4,028,777
1840	746,200,100	4,012,146

2. Amount and charge of the Public Debt, supposing the Terminable Annuities were converted into equivalent Perpetual Annuities:

	Capital.	Interest.
1827	£822,778,347	£27,085,877
1830	811,278,253	25,984,893
1834	799,583,378	25,560,285
1840*	815,250,634	25,994,702

3. Funded and Unfunded Debt; also Funded and Unfunded Debt including the value in capital of the Terminable Annuities.

	Funded and Unfunded Debt.	Debt and Capitalised Annuities.
1827	£805,023,742	£850,325,198
1830	784,758.646	838,549,903
1834	773,201,900	829,109,978
1840	788,642,775	837,521,684
1845	789,474,358	856,984,028

4. Annual Interest of the Unredeemed Funded Debt.

1827	£25,500,326
1830	24,102,200
1834	23,603,502
1840	24,283,940
1845	23,719,148

The diminution of the annual burthen in the course of twenty-three years, from 1816 to 1839, was 3,150,710*l.*, at which rate the total extinction of the debt would not be effected until the year 2053. The slow progress made in this direction stands in striking contrast to the rapidity with which the load was accumulated, the entire diminution effected during twenty-three years of peace being scarcely equal to the additions made during some of the

* Excluding the Slave Emancipation Loan, the Debt and Annuities would have been 793,686,885*l.* and the Interest 25,314,971*l.*

individual years of the war. In 1844 a portion of the National Debt which amounted to 248,701,379*l.* on which 3½ per cent. was paid, was converted into a 3¼ per cent. stock. This rate of interest is guaranteed until 1854, after which period 3 per cent. interest is guaranteed for twenty years. The immediate saving amounted to 625,000*l.* per annum. After 1854, the annual saving will amount to 1,250,000*l.*

It will be seen on comparing the above statements for 1815 and 1845, that the terminable annuities increased from 1,894,612*l.* to 4,025,210*l.* By the act 48 Geo. III. and several subsequent acts, the commissioners for the reduction of the National Debt were empowered to grant annuities, either for lives or for certain terms of years, the payment for such annuities being made in equivalent portions of permanent annuities, which were therefore to be given up and cancelled. By this course, which it will be seen has been acted upon to some extent since the peace, some future relief will be obtained at the expense of a present sacrifice. This plan, provided it be not carried so far as to interfere with the onward progress of the country, through an overload of taxation, appears to be dictated by sound prudence. A part of the terminable annuities (1,294,179*l.*) will expire in 1860; in 1867 a further portion amounting to 585,740*l.* will also expire; and after that time portions will rapidly fall in. "If," says Lord Congleton ('Financial Reform,' p. 204) "all the loans which have been raised since the beginning of the war of 1739 had been borrowed in annuities for ninety-nine years, their extinction would already have commenced." Dr. Price observes, that an annuity for one hundred years is nearly the same in value as a perpetual annuity.

If the above course of proceeding is justly characterised as prudent, what must be said of the scheme of a directly opposite tendency which was brought forward and partially carried into effect by the government in 1822? When the measure for commuting the half-pay and pensions usually denominated the "dead weight" was adopted in that year, the annual charge to which those obligations amounted was about five millions. From year to year the public would have been relieved from a part of this burthen through the falling in of lives, until, according to the most accurate computation, the whole would have ceased in forty-five years. The measure above alluded to was an attempt to commute these diminishing payments into an unvarying annuity of forty-five years certain; and the calculation which was made assumed that by the sale of such a fixed annuity of 2,800,000*l.* funds might be procured enough to meet the diminishing demands of the claimants. Only a part of this annuity was sold. The Bank of England purchased an annuity, payable half-yearly until 1867, for 585,740*l.*, and paid for the same between 1823 and 1828, in nearly equal quarterly instalments, the sum of 13,089,419*l.* For the sake of obtaining a partial relief during those six years, to the amount of 9½ millions, we have thus had fixed upon the country for thirty-nine subsequent years an annual payment of 585,740*l.* It is not possible to allow that both the courses, so directly opposed to each other, could have been wise. Without inquiring further into the matter, it may be said that the plan of taking a larger burthen upon ourselves, that we may relieve those who come after us, has at least the recommendation of being the most generous; and considering that our successors will have had no hand in the contracting of the debts, the burthen of which they will have to bear, it might also be said that such a course is the most just.

Some saving has been effected since 1816 in the charges of management. This saving was part of the bargain made by the government with the Bank of England on the renewal of its charter in 1833 and 1844, and may be considered as a part of the price paid by that establishment for the prolongation of certain of its privileges. [BANK, p. 267.] The functions intrusted to the Bank of England with reference to the National Debt do not extend to the transaction of any matter connected with its reduction. Such business is placed under the control of a body of commissioners, who act *ex officio*

under the provisions of an act of parliament. This board is composed of the speaker of the House of Commons, the chancellor of the exchequer, the master of the rolls, the lord chief baron of the Court of Exchequer, the accountant-general of the Court of Chancery, and the governor and the deputy-governor of the Bank of England. The greater part of these commissioners do not take any part in the management of the business, the details of which are attended to by permanent officers, viz. a secretary and comptroller-general, and an actuary, with an adequate establishment of assistants and clerks: the ultimate control is exercised by the chancellor of the exchequer for the time being, assisted by the governor and deputy-governor of the Bank of England.

The Unfunded Debt consists chiefly of Exchequer Bills, and their use is explained under the head UNFUNDED DEBT.

NATIONS, LAW OF. [INTERNATIONAL LAW; LAW, p. 175.]

NATURALIZATION, from the Latin *Naturalis*, natural. "If an alien be naturalized," says Coke (Co. Lit., 129, *a*), "he shall be to all intents as a natural subject, and shall inherit as if he had been born within the king's legiance." [ALLEGIANCE.] This rule however is subject to some limitations, which are stated in the article ALIEN, p. 102. The policy of naturalization is discussed in the article CITIZEN, p. 511.

Formerly there could be no naturalization except by act of parliament, but a new statute (7 & 8 Vict. c. 66) has facilitated naturalization, and made some other alterations in the law relating to aliens. The act repeals the clause of 1 Geo. I. c. 4, which enacted that every Naturalization Bill should contain clauses to the effect that no person naturalized should be a member of the Privy Council, or of either house of Parliament, or hold any office, civil or military, or be capable of holding grants from the crown, of lands, tenements, or hereditaments, either in his own name or by any person in trust for him. By the 7 & 8 Vict. c. 66, a person born out of her majesty's dominions, of a mother who is a natural-born subject of the United Kingdom, is rendered capable of taking real or personal estate, by devise, purchase, or inheritance; and an alien who is the subject of a friendly state may take and hold every species of personal property, except chattels real, as fully and effectually as natural-born subjects. The subject of a friendly state may also, for the purpose of residence or occupation, either by himself or his servants, hold lands, houses, or tenements for any term not exceeding 21 years; and may enjoy the same rights, remedies, exemptions, and privileges (except the right of voting at elections for members of parliament) as if he were a natural-born subject. An alien woman married to a natural-born British subject becomes naturalized by such marriage. Such of the provisions of the following Acts which are inconsistent with the Act 7 & 8 Vict. are repealed:—12 & 13 Wm. III. c. 2; 1 Geo. I. sess. 2, c. 4; 14 Geo. III. c. 84.

Under the Act 7 & 8 Vict. c. 66, an alien who comes to reside in the United Kingdom with a view of settling, may by the following course obtain nearly all the rights of a natural-born subject. He is required first to present a memorial to the secretary of state, containing a statement of his age, profession, trade, or other occupation; the length of time he has resided in this country, and the ground on which he seeks to obtain any of the rights of a British subject; and praying for a certificate, which must be granted before further steps can be taken. The certificate, granted by the secretary of state, recites such parts of the memorial as, after due investigation, are found to be true and material, and this instrument confers upon the applicant the rights and privileges of a British subject, except the capacity of being a member of the privy council, or a member of the houses of parliament, and except the rights and capacities (if any) specially excepted in and by such certificate. The certificate must be enrolled in the court of chancery, and within sixty days after its date the memorialist must take and subscribe an oath of allegiance. The course of proceeding to be adopted by aliens wishing to become naturalized

is left, so far as details are concerned, to the secretary of state, and the fees are fixed by the Lords of the Treasury. Persons who were naturalized before the passing of 7 & 8 Vict. c. 66, and who had resided in this country for five successive years, are declared to be entitled to all rights conferred by the Act.

The number of foreigners naturalized previous to the passing of 7 & 8 Vict. did not on an average exceed seven or eight a year, and the number who applied for letters of denization did not exceed twenty-five annually.

NATURE, LAW OF. [LAW, p. 175.]

NAVIGATION LAWS. [SHIPS.]

NAVY, BRITISH. The Saxons took advantage of the rich harvest opened to all who would attack the Roman provinces by sea, and ravaged the coast to such an extent as to oblige the Romans to establish a fleet in the English Channel to repel them. After the Saxons had been long in possession of England, they lost their naval arts, and in their turn became a prey to the constant attacks of the Sea-kings and other pirates. We have no record of the size or number of the vessels which sustained so many conflicts with the Danes in the ninth century. Alfred the Great was the founder of the English navy. He first perceived the necessity of a fleet to protect the coasts from the swarms of pirates in the northern seas. A slight advantage gained by some ships of his over the Danes, in 876, induced him to build long ships and galleys, which, as his countrymen were not competent to manage them, he manned with such piratical foreigners as he could engage. After he had driven out the Danes, he applied his talents to improve his ships, and built vessels higher, longer, and swifter than before, some rowing thirty pairs of oars, others more. Ethelred made a law that whoever was lord of 310 hydes of land should furnish one vessel for the service of the country.

William the Conqueror established the Cinque Ports, and gave them certain privileges on condition of their furnishing 52 ships for 15 days in case of emergency. King John claimed for England the sovereignty of the seas, and declared that all ships belonging to foreign nations which should refuse to strike to the British flag should be deemed fair and lawful prize. In the year 1293, an English sailor having been killed in a French port, war ensued, which it was agreed to settle by a naval action, which was fought in the middle of the Channel, and the English, being victorious, carried off above 250 sail. In 1340, when King Edward III. with 240 ships was on his voyage to Flanders, he fell in with and completely defeated, off Sluys, the French fleet of 400 sail, manned with 40,000 men. The same king blockaded Brest with 730 sail, containing 15,000 men. Many of the ships composing these fleets were Genoese and Venetian mercenaries, but they must have been very small, and the numbers of ships and men are probably exaggerated. The ships at this time were not royal ships. The several towns were required to furnish their contingent. In 1338 Edward III., wanting ships for the defence of the kingdom, commanded Bristol to furnish 24 vessels, and Liverpool one small one. In 1345 Bristol contributed 22 ships and 608 mariners, and London 22 ships and 662 mariners. Henry V. had something of a navy, for we find among the records in the Tower a grant under his hand of annuities to "the maistres of certaine of our owne grete shippes, carrakes, barges, and ballyngers." Henry VII., who succeeded in 1485, seems to have been the first king who thought of providing a naval force which might be at all times ready for the service of the state. He built the Great Harry, properly speaking the first ship of the royal navy; she cost 15,000*l.*, and was accidentally burnt in 1553. Henry VIII. perfected the designs of his father. He constituted the Admiralty and Navy Office, established the Trinity House, and the dockyards of Deptford, Woolwich, and Portsmouth; appointed regular salaries for the admirals, captains, and sailors; and made the sea service a distinct profession.

The ships of this period were high, unwieldy, and narrow; their guns were close to the water, and they had lofty poops and prows, like Chinese junks, insomuch that Sir Walter Raleigh informs us "that the Mary Rose, a goodly ship

of the largest size, by a little sway of the ship in casting about, her ports being within 16 inches of the water, was overset and sunk." This took place at Spithead in the presence of the king, and most of her officers and crew were drowned. The Henry Grace de Dieu, the largest ship built in the reign of Henry VIII., is said to have measured above 1000 tons. At the death of Henry VIII., the tonnage of the navy was 12,000 tons. Elizabeth increased the navy greatly. The fleet which met the Spanish Armada numbered 176 ships, manned by 14,996 men; but these were not all "shippes royal," for she encouraged the merchants to build large ships, which on occasion were converted into ships of war, and rated at 50 to 100 tons more than they measured. She raised the wages of seamen to 10 shillings per month. Signals were first used in this reign as a means of communication between ships. In 1603 the navy had 42 ships, measuring 17,000 tons. In the reign of James I. lived the first able and scientific naval architect, Phineas Pett, and the king had the good sense to encourage him. Pett introduced a better system of building, aud relieved the ships of much of their top-hamper. Before the civil wars broke out, Charles I. built the Sovereign of the Seas, of 100 guns, and measuring 1637 tons. In this reign the navy was first divided into rates and classes. Cromwell found the navy much reduced, but his energy restored it, and he left 154 sail, measuring 57,643 tons, of which one-third were two-deckers. Cromwell first laid before parliament estimates for the support of the navy, and obtained 400,000*l.* per annum for that purpose. The navy flourished under Charles II., with the Duke of York at its head, assisted by Samuel Pepys as secretary, until 1673, when the duke's inability to take the test oath caused his retirement, and the king's pecuniary difficulties leading him to neglect the navy, it fell into decay. The Duke of York was recalled to his post in 1684, and at his accession in the following year there were 179 vessels, measuring 103,558 tons. James II. on coming to the throne took active measures for the restoration of the navy; he suspended the Navy Board, and appointed a new commission, with which he joined Sir Anthony Deane, the best naval architect of the time, who essentially improved the ships of the line by copying from a French model. Four hundred thousand pounds per annum were set apart for naval purposes, and so diligent were the commissioners that at the Revolution the fleet was in excellent condition, with sea stores complete for eight months for each ship. The force was 154 vessels, carrying 6930 guns and 42,000 men, whereof nine were first-rates.

King William immediately on being placed on the throne went to war with France, whose navy was then very powerful; in 1681 it consisted of 179 vessels of all sorts, carrying 7080 guns, besides 30 galleys. An act was passed in his second year, for building 30 ships, to carry 60, 70, and 80 guns respectively. The dockyard at Hamoaze, out of which has since grown the considerable town of Devonport, which now returns two members to parliament, was then established. Queen Anne found at her accession the navy to consist of 272 vessels, measuring 159,020 tons, but this estimate includes hulks, hoys, and other vessels not carrying guns. All measures adding to the strength and efficiency of the navy were exceedingly popular during this reign. At the death of Anne in 1714, the number of ships was less, but the tonnage increased, being ships 198, guns 10,600, tons 156,640. The parliamentary vote of that year was 245,700*l.* and 10,000 seamen and marines. During the first four years of George I. large sums were voted for the extraordinary repairs which were required after the long war. A new establishment of guns also was ordered in this reign. The navy remained stationary till the year 1739, when hostilities commenced against Spain, and the navy was augmented, particularly in the smaller classes, and the dimensions of several classes were enlarged. War broke out with France in 1744, at which period there were 128 sail of the line. At this time all prizes taken by the king's ships were declared to be the property of the captors. In 1747 a naval uniform was first established. The navy increased

vastly during this war, in which 35 sail of the line were taken or destroyed by the English. George III. at his accession found the navy to consist of,

Ships of the line	127	measuring 321,104 tons.
Ships of 50 guns and under . .	198	

The vote for the year 1760 was 432,629*l.* and 70,000 seamen and marines. In the short war of 1762, 20 sail of the line were added to the navy, and at the end of the American revolutionary war it was composed as follows:—

Sail of the line.	174	about 500,000 tons.
Under	203	

The navy was kept in a high state of preparation, and when, on the 1st of February, 1793, the French republic declared war against England, this country was not unprepared. A period now commences in which the gigantic efforts made by England, and the protection necessary for a large mercantile marine, raised the British navy to such a height as to enable it single-handed to maintain the sovereignty of the seas against all other navies combined. Sir Charles Middleton, afterwards Lord Barham, had, when comptroller of the navy in 1783, established the regulation that a great proportion of stores, sails, &c. should be laid by for each ship in ordinary; so that in a few weeks after the declaration of war there were 54 sail of the line and 146 smaller vessels at sea. The vote for the service of the navy was 5,525,331*l.*, 85,000 seamen and marines. The navy of France had never been so powerful: it amounted to above 200 vessels, of which 82 were of the line and 71 in addition were immediately ordered to be built. The English had about 115 sail of the line fit for service, but the majority of the French ships were larger and finer, and carried heavier guns on their lower or principal battery. The following abstract will show the losses on both sides up to the peace of Amiens, exclusive of the casual losses:—

	Captured.	Destroyed.
British ships of the line .	5	..
Smaller vessels . . .	37	9
Total	42	9

	Captured.	Destroyed.
French ships of the line .	32	11
Dutch do.	18	0
Spanish do.	6	5
Danish do.	2	0
	58	16
French smaller vessels	266	44
Dutch do	62	6
Spanish do	57	10
Total . . .	443	76

This estimate does not include 807 privateers, chiefly French, taken and destroyed. Of the above, 50 sail of the line and 94 under that size were added to the British navy.

During the peace of Amiens preparations for war were actively continued on both sides, and the declaration on the part of England was made in the month of May, 1803, at which time the navy was of the following force, as compared with 1793:—

	Ships of line.	Under.	Tons.
1793	153	411	402,555
1803	189	781	650,976

Notwithstanding the apparent increase, there were not so many line-of-battle ships fit for sea at the latter as at the former period by about ten. The French force in serviceable line-of-battle ships in March, 1803, was 66, the British 111. During this war there were employed from 100,000 to 120,000 seamen and marines till 1810, when the number was increased to 145,000. There were about 100 sail of the line, 150 frigates, and above 200 sloops, besides small armed vessels, amounting in the whole to about 500 sail of pendants constantly employed. The following abstract shows the losses on each side during the war:—

	Captured.	Destroyed.
British—Ships of line .	0	0
Under . .	83	7
	83	7
Enemies'—Ships of line	55	14
Under . .	79	23
	134	37

of which 33 sail of the line and 68 under were added to the British navy.

In George III.'s reign the dockyard of Pembroke was established.

The following table will show the force of the British navy at three distinct periods: the breaking out of the French revolutionary war; a few years subsequent to the peace; and in 1839.

The Parliamentary votes for the navy for the year 1845-6 amounted to 6,936,196*l.* [MILITARY FORCE, p. 334]; and they are to be increased for 1846-7.

The parliamentary vote for the service of the navy, 1839–40, was as follows:—

			£
Officers	3,400	For the effective service	3,492,132
Petty do.	3,998	For the non-effective service	1,488,221
Seamen	12,846	Other departments, viz., convicts and transport of troops	217,158
	20,244		
Marines	9,000		
	29,244	Total charge	5,197,511

RATE.	1793.				1820.				1839.			
	In Commission.	In Ordinary.	Building.	Total.	In Commission.	In Ordinary.	Building.	Total.	In Commission.	In Ordinary.	Building.	Total.
First	1	2	2	5	2	14	7	23	4	14	6	24
Second	4	12	5	21	1	8	12	21	5	10	11	26
Third	21	70	5	96	11	69	3	83	15	31	2	48
Of the Line	26	84	12	122	14	91	22	127	24	55	19	98
Fourth	7	5	3	*15	7	7	7	21	2	15	2	19
Fifth	35	44	3	82	14	67	25	106	8	53	8	69
Sixth	15	20	..	35	14	7	18	39	21	3	4	28
Sloops	34	13	2	49	49	62	34	145	45	10	13	68
Steam-vessels	..	..	..	..	..	..	..	..	†30	4	10	44
Gun-brigs, Schooners, Cutters	18	..	..	18	15	10	2	27	‡45	9	12	66
Grand Total	135	166	20	321	113	244	108	465	175	149	68	392

The naval force of Great Britain and of other countries in 1845 is shown under MILITARY FORCE. On the 1st January, 1846, the number of ships of all classes and sizes in the British royal navy was 636, exclusive of revenue vessels, which were 72 in number. The number of all classes in commission was 234; 84 of which were steam-vessels. The horse-power of 8 steam-frigates exceeded 5000. The number of men and boys voted for the financial year 1845-6 was 29,000 seamen and boys, and 10,500 marines.

Until the Restoration there does not

* In 1793 the fourth-rates on two decks formed part of the line of battle.

† Of these steam-vessels only seven appear to be adapted for war; the remainder are employed in carrying despatches, troops, &c. There are besides 30 steamers, not entered here, which are employed in the packet-service in Great Britain.

‡ There are also 23 sloops fitted for foreign packets, whose station in 1839 was at Falmouth.

appear to have been any precise division into classes; nor have we any account of the armament of ships; at that time certain ships were ordered to be built to carry the following:—

Description of Guns.	1st Rate. 780 men.	2nd Rate. 660 men.	3rd Rate. 470 men.
Cannon = 42 pndrs.	26	..	..
Demicannon = 32 pounders	..	26	26
Culverins = 18 pounders	28	26	..
Demi do. = 12 pounders	..	..	26
Sakers = 6 pndrs	28	26	..
Forecastle	4	..	4
Quarter-deck	12	10	10
3-pounders	2	2	4
Total number of Guns	100	90	70

There was, however, no uniformity preserved; and in 1745 a committee was appointed, which recommended certain changes in the rating and arming, which however were not adhered to any more than the former systems. At the peace the Board of Admiralty represented this to the Prince Regent in a memorial. The present establishment of rates and classes was fixed by order in council, February, 1817:—

Class I.—Rated ships:
- First-rate, comprising all three-decked ships.
- Second. One of Her Majesty's yachts, and all two-decked ships whose war-complements consist of 700 men and upwards.
- Third. Her Majesty's other yachts, and all ships whose complements are from 600 to 700.
- Fourth. Ships whose complements are from 400 to 600.
- Fifth. Ships whose complements are from 250 to 400.
- Sixth. Ships under 250.

Class II. Sloops and bomb-vessels.

All such vessels as are commanded by a commander.

Class III. All other smaller vessels, such as are commanded by lieutenants or other inferior officers.

Great improvements have taken place in the size and form of the British ships, as well as in the arrangement of the materials composing them, especially during the present century. As France and Spain enlarged their ships, the English were obliged to do the same; while from many of their ships added to the English navy we greatly improved our models. The following view of the increase of the size of first-rates will demonstrate this point:—

Year.	Tonnage of First-Rates.
1677	1500 to 1600
1720	1800
1745	2000
1795	2350, the Ville de Paris.
1808	2616, Caledonia.
1839	3100, Victoria, and several others.

There is now a frigate, the Vernon, of greater tonnage than the first-rate of 1745, of 2080 tons, and 50 guns.

Sir Robert Seppings, late surveyor of the navy, introduced the circular bow and stern, the system of diagonal timbering or bracing, whereby the strength and durability of our ships are so immensely increased; the method of scarfing short pieces, by which the delay and difficulty often attendant on the procuring of crooked timber are avoided; the making frigate-timber applicable to the building of line-of battle ships, by the use of a circular coak, or dowel, instead of chocks, thereby effecting a saving of about 1000*l.* in the building of a 74-gun ship, and the use of iron knees, by which he effected an immense saving of timber and space.

Sir W. Symonds, the able surveyor, has effected a still further economy of space by removing the chocks behind the iron knees, and using metal diagonal braces instead of wood. In latter years the various naval architects, Sir R. Seppings, Captains Hayes and Symonds, R.N., and Professor Inman, have been permitted to try their respective systems in various experimental squadrons, composed of vessels built under their directions; and although many opinions are held as to the merits of each, there can be but one with regard to the general

advantage arising to the science of naval architecture, so long neglected. A school for shipwright apprentices was established at Portsmouth, which, after producing more officers than could be provided for, was broken up. Our ships, those at least built of oak—for we have not yet worn out a ship built of teak—do not seem to be as durable as in former times. The Royal William, of 100 guns, which bore the flag of Richard Bickerton at Spithead in 1813, and was shortly after broken up, was built in the year 1719. The Sovereign of the Seas, built in 1637, was repaired in 1684, when all the ancient timber was so hard that it was difficult to work it. It was the practice in the north of England, and in Staffordshire especially, to bark timber standing, and to let it remain in that state for a time to season. The Sovereign of the Seas was built of such timber. The Achilles, 60, was built by contract in 1757, of timber barked in the spring and felled in the next winter: she was docked in 1770, and found exceedingly sound, and was sold in 1784, because she was too small for the line-of-battle. The Hawke sloop was built in 1793. Half of this vessel was built of timber barked in 1787, and felled in 1790; the other half of timber felled in the usual manner from the same soil and neighbourhood. In 1803 she was so decayed that she was taken to pieces; both sides appear to have been equally decayed.

The government of the navy is vested in the lord-high-admiral, which office has been in commission since the Revolution, with the exception of two short periods, 1707-8 and 1827-8, when it was held respectively by Prince George of Denmark and William IV. when duke of Clarence. At present the Board consists of a First Lord, who is a member of the cabinet, and five junior lords. By their orders all ships are built, sold, or broken up; commissioned, employed, and paid off. All appointments and promotions are made or approved by them; all honours, pensions, and gratuities are granted on their recommendation. All orders for the payment of naval monies are made by them; they prepare the navy estimates, and lay them before parliament. The civil departments of the admiralty are directed by the surveyor of the navy, accountant-general, storekeeper-general, comptroller of victualling, and physician-general.

The navy is composed of two bodies of men—seamen and marines.

There are commissioned, warrant, and petty officers.

The commissioned officers are flag-officers, captains, commanders, and lieutenants.

Flag-officers are divided into the following classes, and rank and command in the order here following:—

Admirals of the fleet.

Admirals of the red, white, blue squadrons.

Vice-admirals of the red, white, blue squadrons.

Rear-admirals of the red, white, blue squadrons.

There are superannuated and retired rear-admirals, who enjoy the rank and pay, but do not rise.

The admiral of the fleet, when in command, bears the union flag at the main-top-gallant-mast. The other flag-officers bear a square flag of the colour of their squadron at the main, fore, or mizen top-gallant-mast, according to their rank.

The flag-officer holding the chief command of a fleet or squadron employed within certain geographical limits, termed a station, is called a commander-in-chief. He is responsible for the efficiency and conduct of the fleet under his orders; he disposes of the vessels composing it in such manner as will be most advantageous for the service; but without some especial necessity he is never to send one beyond the limits of his station. All vacancies in ships under his orders which are caused by death or dismissal from the service by the sentence of a court-martial, are in his gift. As to the various officers of the navy see ADMIRAL, CAPTAIN, &c.

On the 1st January, 1846, the number of officers of the royal navy was as follows:—Flag, 154; captains and retired captains, 769; commanders and retired commanders, 1137; lieutenants, 2528; marine officers, 741; masters, 432; medi-

cal officers, 970; pursers, 485; naval instructors, 46; chaplains, 97; mates, 172; second mates, 129; acting assistant surgeons, 59; qualified clerks, 216: total 7985.

The crew of a ship consists of petty officers, able seamen, ordinary seamen, landsmen, boys, and marines. In time of peace the whole crew are entered voluntarily; during war, men are liable to impressment. The following persons are exempt from it, and no seaman can be impressed except by an officer having a press-warrant:—

Masters of merchant vessels;

Mates of those above 50 tons;

Boatswains and carpenters of those of 100 tons and upwards;

Men belonging to craft of all kinds employed in the navy, victualling, ordnance, excise, customs, and post-office;

Watermen belonging to the insurance offices in London and Westminster;

All men above 55 or under 18 years of age;

Apprentices not having used the sea before the date of their indentures, and not more than three years from the said date;

Landsmen not having served at sea full two years;

Harpooners, line-managers, steerers, and all seamen and mariners who have entered the Greenland and southern whale-fisheries.

The best seamen are rated petty officers by the captain; they are of two classes, distinguished by a crown and anchor for the first class, and an anchor for the second, worked in white cloth upon the left arm; they have an increase of pay, and are not amenable to corporal punishment while holding that rank.

There is a supply of boys to the navy from the asylum at Greenwich and from the Marine Society, but many more are brought into the navy by volunteering. Every ship, according to her rate or class, bears a certain number of marines as part of her complement. [MARINES.]

For the due maintenance of discipline, the captain or commander of every ship or vessel is authorised to inflict corporal punishment on any seaman, marine, or boy, by warrant under his hand. Courts-martial are ordered by the Admiralty and commanders-in-chief.

The idea of establishing an hospital for infirm and disabled seamen originated with Mary, wife of William III., and Sir Christopher Wren was employed to build an additional wing to Greenwich Palace. The king granted 2000*l.* a year towards it, large subscriptions were added by noble and wealthy persons, estates were willed to it by individuals, all mariners were made to subscribe 6*d.* per month, forfeited and unclaimed prize-money, and various grants were given. The forfeited estates of the Earl of Derwentwater, the net rental of which is now between 30,000*l.* and 40,000*l.* a year, were given. The revenue of the hospital is about 150,000*l.* a year. The establishment consists of a governor, a lieutenant-governor (both flag-officers), four captains, and eight lieutenants, residing in the hospital. There are about 2710 in-pensioners, and 120 matrons and nurses, all of whom must be seamen's widows.

The following is the scale of pensions for officers and seamen wounded and worn-out in the service:—

	Per An. £. s.		Per An. £. s.
For an admiral, from	300 0	to	700 0
„ captain (wounds)	250 0	Loss of limb	300 0
„ commander „	150 0		200 0
„ lieutenant „	91 5		91 5

Marine officers, as in the army.

Every mate, second master, assistant-surgeon, midshipman, master's assistant, naval instructor, clerk, and volunteer of the first and second class, from 1*s.* to 2*s.* 6*d.* a day, according to the nature and degree of the injury.

Boatswains, gunners, carpenters, and engineers, when unfit for further service, receive a superannuation allowance of 3*l.* a year for each year they served in a ship in commission, and 1*l.* a year each year in ordinary, and a further sum of from 1*l.* to 15*l.* a year may be added by the Admiralty. They retain besides any pension for servitude as a petty-officer to which they may be entitled, and for wounds from 15*l.* to 50*l.* a year in addition to all other pensions.

Every other petty officer, seaman, ma-

rine, and boy, shall receive for wounds from 6*d.* to 2*s.* a day; and every able seaman for twenty-one years' servitude, reckoning from the age of twenty, from 10*d.* to 1*s.* 2*d.* a day; if discharged from infirmity after fourteen years' service, from 6*d.* to 9*d.* a day; and under fourteen years' service, if discharged from disability contracted in the service, from 3*d.* to 6*d.* a day, or a gratuity in lieu, of 1*l.* to 18*l.* If a man become totally blind, he shall have 3*d.* a day added to any of the above. Ordinary seamen receive three-fourths, landsmen two-thirds, boys half the able seamen's pension. Marines, as able seamen.

Certain petty and non-commissioned officers receive, in addition to the above, other allowances.

Persons discharged with disgrace, or by sentence of a court-martial, are not entitled to a pension. On a ship being paid-off, the captain may recommend any petty-officer or seaman, non-commissioned officer or marine, for the medal and gratuity for invariable good conduct; 15*l.* for first-class petty-officers and serjeants, if they have served as such ten years, 7*l.* to second-class petty-officers and serjeants who have served as such seven years, and 5*l.* to able seamen and marines.

The widows of officers who are left in distressed circumstances, receive pensions on the following scale, under the regulations and at the discretion of the Board of Admiralty:—

		Per An.
The widow of a	Flag-officer	£120
	Retired rear-admiral	100
	Captain, three years' standing	90
	„ under three years	80
	Commander	70
	Superannuated commander	60
	Physician	60
	Lieutenant	50
	Master	40
	Chaplain	40
	Surgeon	40
	Purser	40
	Assistant-surgeon	36

The amount paid in pensions to officers for wounds and good service, to widows of officers, widows and relatives of officers slain, and the out-pensioners of Greenwich Hospital, is 521,572*l.*

Abstract of Pensions paid to the Navy.

Good-service pensions	£4 350
Commissioned and warrant officers	81,619
Widows and relatives of officers slain	11,786
Widows of naval officers	172,381
Widows of marine ditto	10,356
Compassionate fund	14,000
Out-pensions of Greenwich Hospital	227,000
	£521,572

There is a Naval College at Portsmouth.

There are two schools at Greenwich, called the Upper and Lower Schools. The Upper School comprises two classes:

1st. One hundred sons of commissioned and wardroom warrant-officers of the Royal Navy and marines.

2nd. Three hundred sons of officers of the above or inferior rank, of private seamen and marines who have served or are serving her Majesty, and of officers and seamen of the merchant service.

They are admitted from eleven to twelve years of age, under certain regulations, and are subject to the same discipline, diet, education, clothing, and destination. The term of education is three years, at the expiration of which, or sooner if the course of education be completed, they are sent to sea in the queen's or merchant service, or otherwise disposed of, as may be determined on.

The Lower School consists of 400 boys and 200 girls, the children of warrant and petty officers, seamen, and non-commissioned officers and privates of marines, who have served or are serving, or have lost their lives in the service of her Majesty. They are admitted from nine to twelve years of age, and quit at fourteen, the boys being sent to sea, and the girls put to trades and household service; any unprovided for at fourteen are sent to their parents. Any boy may be removed from this to the Upper School on obtaining a presentation, if not more than twelve years old, and possessing character and abilities.

In 1744, as already observed, all prizes were declared to be the property of the captors; the scale of the distribution of prize-money was fixed by order in council, Feb. 3, 1836.

When any ship of the Royal Navy carries bullion or jewels on freight, the captain or commander is allowed a per centage, regulated by the queen in council, as compensation for the risk and charge, one-fourth part of which is given to Greenwich Hospital, one-fourth part to the commander-in-chief, if he shares the responsibility, and the other half to the captain.

Officers settling in the colonies are allowed a remission of the purchase-money, in amount from 100*l.* to 300*l.*, according to their rank and length of service. [EMIGRATION, p. 828.]

(Reference has been made to Derrick's *Memoirs of the Rise and Progress of the Royal Navy;* James's *Naval History;* Sir W. Raleigh's *Essay on the Invention of Shipping;* Sharon Turner's *Hist. Anglo-Saxons;* Barrow's *Life of Lord Anson;* and various official papers.)

NE EXEAT REGNO, the name of a writ which issues out of Chancery on the application of a party complainant, to prevent his debtor from leaving the realm. The writ is directed to the sheriff of the county in which the debtor is; and after reciting that "it is represented to the king in his Chancery on the part of the complainant against the debtor, the defendant, that he the said defendant is greatly indebted to the said complainant, and designs quickly to go into parts beyond the seas (as by oath made on that behalf appears), which tends to the great prejudice and damage of the said complainant," commands him to "cause the said debtor to give sufficient bail or security, in the sum of *l.*, that he will not go, or attempt to go, into parts beyond the seas, without leave of the said court;" and in case the said debtor shall refuse to give such bail or security, the sheriff is to commit him to prison until he shall do it of his own accord, &c.

The question which always arises on application to the Court of Chancery for this writ is nothing more than this: whether the plaintiff has made out a case which is conformable to the terms of the writ, as interpreted by the decisions of the court.

The writ cannot be applied for unless a bill is already filed; but a plaintiff may apply for it in any stage of a suit, whether the writ is prayed for by the bill or not. The plaintiff cannot have the writ if he is out of the jurisdiction of the Court of Chancery. There must be a debt in equity actually due at the time when the writ is applied for. The application for the writ must be accompanied with an affidavit swearing positively to the debt, except the bill is for an account, in which case it is sufficient if the plaintiff swear that he believes there is a balance in his favour; or except where there is other decisive evidence of the debt. The affidavit must also show that the defendant is going abroad, or it must show facts which prove that conclusion, and that the debt will be in danger if he quit the realm. The writ may be moved for ex parte, and it issues until answer and further order. A defendant may apply to discharge the writ on putting in his answer.

This writ is founded on the real or supposed prerogative of the king to restrain his subjects from departing from the realm. The "Natura Brevium" contains two forms of writs, one of which has for its object to restrain a clergyman from going abroad without the king's licence, and commands the sheriff to take security from him or commit him to prison; the other has for its object to prevent a layman from going abroad without the king's licence; but it requires no security from the party, and differs in several other respects from the other writ. These writs are both entitled De Securitate Inveniendа, &c., and seem to be in substance, though not in name, writs of Ne Exeat Regno. From the former of the two the present writ of Ne Exeat seems to be derived.

It is said that the object of this writ, as applied to clergymen, was to prevent them from having frequent intercourse with the Papal see. Whether the prerogative on which these writs were founded was a usurpation on the part of the crown or not, is a matter which has been somewhat discussed. The opinion that such a

power as that which is exercised by this writ "appears to have been unknown to the ancient common law, which, in the freedom of its spirit, allowed every man to depart the realm at his own pleasure" (Beames), is a vague surmise, expressed in language equally vague. This writ, which was originally designed solely for political purposes, has now been applied, as already explained, to the object of restraining a debtor from evading his creditor's demand by quitting the realm; this application has been sanctioned by long usage, the commencement of which is now unknown.

(*A Brief View of the Writ Ne Exeat Regno*, by Beames.)

NEUTRALITY. [INTERNATIONAL LAW; BLOCKADE.]

NEWSPAPERS. On the origin of newspapers much has been written, but the question is still unsettled. 'The English Mercury,' of 1588, which has till lately passed for the earliest printed newspaper, is shown to be a forgery by Mr. Thomas Watts, of the British Museum.

Mr. Watts observes that he has disposed of the claims of France and England to the invention of newspapers; and that apparently the question now lies between Italy and Germany, Venice and Nürnberg. In the reign of James I. packets of news were published in England in the shape of small quarto pamphlets occasionally. The earliest we have met with, preserved in the second volume of the series of newspapers purchased with Dr. Burney's library (also in the British Museum), is entitled 'News out of Holland,' published in 1619 for N. Newbery, followed by other papers of news from different countries in 1620, 1621, and 1622. There can be no doubt of the genuineness of these. In 1622, during the Thirty Years' War, these occasional pamphlets were converted into a regular weekly publication, entitled 'The News of the Present Week,' edited by Nathaniel Butler. This seems to have been the first weekly newspaper in England.

About this period newspapers began also to be established on the Continent. Their originator at Paris is aid to have been one Renaudot, a physician, who obtained a privilege for publishing news in 1632. It would appear that not long after this time there were more newspapers than one in England.

Upon the breaking out of the civil war in Charles the First's time, great numbers of newspapers, which had hitherto been chiefly confined to foreign intelligence, were published and spread abroad by the different parties into which the state was then divided, under the titles of 'Diurnals,' 'Special Passages,' 'Intelligencers,' 'Mercuries,' &c., mostly in the size of small quarto, and treating of domestic matters. Nearly a score are said to have come out in 1643, when the war was at its height. Some papers were entitled 'News from Hull,' 'News from the North,' 'The Last-printed News from Chichester, Windsor, Winchester, Chester,' &c., and others too numerous to mention. We also find 'The Scots Dove' opposed to the 'Parliament Kite,' or 'The Secret Owl.'

In 1662 the 'Kingdom's Intelligencer' was commenced in London, which contained a greater variety of useful information than any other of its predecessors. It had a sort of obituary, notices of proceedings in parliament and in the law courts, &c. Some curious advertisements also appear in it. In 1663 another paper, called 'The Intelligencer, published for the satisfaction and information of the people,' was started by Roger (afterwards Sir Roger) L'Estrange, who warmly espoused the cause of the crown on all occasions, and infused into his newspapers more information, more entertainment, and more advertisements of importance than were contained in any succeeding paper whatever previous to the reign of Anne. L'Estrange continued his journal for two years, but dropped it upon the appearance of the 'London Gazette,' first called the 'Oxford Gazette,' owing to the earlier numbers being issued at Oxford, where the court was then holding and the parliament sitting, on account of the plague being then in London. The first number of what has still continued to the present time as the 'London Gazette,' was published at Oxford, February 4th, 1665. So numerous did these little *books of news* become, that between the years 1661 and 1668 no less

than seventy of them were published under various titles.

On the 12th of May, 1680, L'Estrange, who had then started a second paper, called the 'Observator,' first exercised his authority as licenser of the press, by procuring to be issued a "proclamation for suppressing the printing and publishing unlicensed news-books and pamphlets of news, &c." The charge for inserting advertisements (then untaxed) we learn from the 'Jockey's Intelligencer,' 1683, to be "a shilling for a horse or coach, for notification, and sixpence for renewing;" also in the 'Observator Reformed' it is announced that advertisements of eight lines are inserted for one shilling; and Morphew's 'Country Gentleman's Courant,' two years afterwards, says, that "seeing promotion of trade is a matter that ought to be encouraged, the price of advertisements is advanced to two pence per line." The publishers at this time however were sometimes puzzled for news to fill their sheets, small as they were; but a few of them got over the difficulty in a sufficiently ingenious manner. The 'Flying Post,' in 1695, announces, that "if any gentleman has a mind to oblige his country friend or correspondent with this account of public affairs, he may have it for two-pence of J. Salisbury, at the Rising Sun in Cornhill, on a sheet of fine paper, *half of which being blank*, he may thereon write his own private business, or the material news of the day." Again 'Dawker's News-Letter:' "This letter will be done upon good writing-paper, and blank space left, that any gentleman may write his own private business. It will be useful to improve the younger sort in writing a curious hand." Another publisher, when there was a dearth of news, filled up the blank part with a piece from the Bible.

It was not until the reign of Anne that the Londoners had a newspaper every day. The first was issued in 1709, and called 'The Daily Courant,' being published every day but Sunday. There were at this time seventeen others published thrice a week, and one twice. Among them was the 'British Apollo,' the 'General Postscript,' the 'London Gazette,' 'the Postman,' the 'Evening Post,' and the 'City Intelligencer.'

It may be sufficient to notice in few words two or three of the more remarkable journals only which have since succeeded. The 'Public Advertiser' was first printed under the title of the 'London Daily Post, and General Advertiser,' so far back as 1726, and assumed its later name only in 1752. 'Junius's Letters were published in this paper. The 'St. James's Chronicle' is another of our oldest papers; at its first publication it was an amalgamation of two papers (the 'St. James's Post' and the 'St. James's Evening Post'), both of which began in 1715. The 'North Briton,' edited by Wilkes, first appeared in 1762; and in the same year the 'Englishman' was established. The 'Englishman' attracted much notice about 1766, on account of the insertion of several satirical articles in it by Burke.

The earliest local provincial newspaper in England is said to have been the 'Norwich Postman,' published in 1706, at the charge of a penny, but "a halfpenny not refused;" followed by the 'Norwich Courant, or Weekly Packet,' in 1714, price three half-pence. Previous to 1720 the 'York Mercury' appeared, followed in that year by the 'York Courant,' which still exists. In this year also a 'Leeds Mercury' was established; and about the same time a 'Gloucester Journal.' In 1730 a 'Manchester Gazette' was published. The 'Derby Mercury' was begun in 1731; the 'Oxford Journal' in 1740; a 'Preston Journal' in 1745, and 'Billinge's Liverpool Advertiser' in 1765.

In Scotland the newspaper-press was first introduced during the civil wars in the seventeenth century. When a party of Cromwell's troops arrived at Leith in 1652, for the purpose of garrisoning the citadel, they brought a printer, named Christopher Higgins, to reprint a London diurnal, called 'Mercurius Politicus,' for their amusement and information. The first number was issued on the 26th October, 1653; and in November the following year, the establishment was transferred to Edinburgh, where this reprinting system was continued till the 11th

April, 1660. On the 31st December, 1660, appeared at Edinburgh, 'The Mercurius Caledonius,' purporting to comprise "the affairs in agitation in Scotland, with a survey of foreign intelligence.' It was a small quarto of eight pages. The last number was dated March 22 to March 28, 1661. It was succeeded by 'The Kingdom's Intelligencer.' In 1669 an 'Edinburgh Gazette' was published by authority, followed in 1705 by the 'Edinburgh Courant,' which still exists. 'The Caledonian Mercury,' also still in existence, was first published on April 28, 1720. After Edinburgh, the next place at which the publication of a newspaper was attempted in Scotland was Glasgow, where the first number of the 'Glasgow Courant' appeared November 11, 1715.

In Ireland, as in England and Scotland, newspaper intelligence originated during civil commotion. As far back as 1641, at the breaking out of the Rebellion of that year, there was printed a news sheet, called 'Warranted Tidings from Ireland;' but from that time to the beginning of the eighteenth century, we have no notice of any other print of the kind, although it is not improbable that there may have been some. About the year 1700, a newspaper called 'Pue's Occurrences,' named after the proprietor, was established in Dublin, and maintained itself for more than half a century. This was the first newspaper published in the Irish capital. The next Dublin print was 'Falkener's Journal,' established in 1728—both were daily papers. Waterford appears to have followed Dublin in publishing news, by the establishment of a paper in 1729, entitled 'The Waterford Flying Post.' The oldest existing newspaper in Ireland is the 'Belfast News Letter,' started in 1737.

The newspapers of Great Britain have much improved within the last thirty years. In 1801 'The Leeds Mercury' contained 21,000 words; 80,000 words in 1835; 120,000 in 1845; and 179,000 words in 1846. Not only has a great increase been made in the size of the provincial papers, but their literary character has undergone a marked improvement, particularly since the close of the last war. Before that time few of them contained any original articles or essays beyond occasional or local paragraphs. Though nearly all the British newspapers may be considered as representing the opinions of some political party, or of some religious denomination, there are now several in which all the important questions on which opinions are divided are discussed with great ability, and particularly questions that relate to agriculture, manufactures, and commerce. By means of this conflict of opposing views, truth is often elicited in the end, and a public opinion is gradually formed upon the secure basis of complete investigation, and the comparison of contending arguments. The importance of newspapers in the actual state of our society can hardly be overrated. Much that is bad is widely diffused, but this is an evil inseparable from the Liberty of the Press, and no man doubts that society on the whole gains largely by the unrestrained publication of everything that affects the general interest and by the free expression of opinion. Political Liberty and the Freedom of Industry owe nearly everything to the press, and on the honesty and ability with which it shall continue to be conducted, our social progress will materially depend.

Newspapers are now as common in all the British dominions abroad as in England. In British India there are several newspapers published in the Bengal language. The first New Zealand Colony, which sailed in September, 1839, carried out the materials for printing a newspaper, of which the first number was printed in England, and the second number in the colony. The same course had been previously adopted in settling the colony of South Australia.

In Germany newspapers originated in the 'Relations,' as they were termed, which sprung up at Augsburg and Vienna in 1524, at Ratisbon in 1528, at Dillingen in 1569, and at Nürnberg in 1571, and which appeared in the form of letters printed, but without date, place, or number. The first German newspaper in numbered sheets was printed in 1612. In 1845 the number of journals

published in the States composing the German Confederation was 1836, of which 1017 were newspapers, and 819 scientific and literary. But many of these newspapers would not be called newspapers in England: many of them contain no political discussion of any kind. The number of journals in Prussia was 405; Bavaria, 96; Saxony, 94; Würtemberg, 48; Hanover, 24; German part of the Austrian States, 26. Newspapers are now common in every European country, from Russia to Spain. The state of the press in some of these countries is noticed under the head PRESS, LIBERTY OF.

In the United States the increase of newspapers has been more rapid than in England. In the year 1704 the first Anglo-American newspaper, called the 'Boston News-Letter,' was published at Boston. In 1719 the first newspaper was published in Pennsylvania; and in 1733 the first newspapers were published in New York and Rhode Island. Now there is hardly a petty town in any of the States without its newspaper, and in the large cities, such as New York, several are published daily. In Pennsylvania and Maryland a considerable number of newspapers are printed in the German language, and distributed among the numerous German settlers in those states. In Louisiana some papers are printed both in French and English. The total number of newspapers in the States exceeds 1200.

The largest collection of newspapers in England is in the British Museum. This collection was commenced by a considerable number being sent there, at the time when the Museum was established, with the library of Sir Hans Sloane. Another collection, of itself valued at 1000*l.*, was purchased in 1813 with the library of the late Dr. Charles Burney. At the end of two years from the time of publication, the commissioners of stamps now transfer to the British Museum, for public use, copies of all the stamped newspapers, both of town and country.

Before a person can commence the printing and publication of a newspaper he is required to execute the following instruments: 1. The Seditious Libel Bond, or Recognizance; 2. the Stamp-office Declaration; 3. the Advertisement Duty Bond.

The recognizance or bond is required by 60 Geo. III. c. 9, one of the objects of which was to make "regulations for restraining the abuses arising from the publication of blasphemous and seditious libels." This act was amended by 11 Geo. IV. c. 73, when the punishment of banishment for these libels was abolished, but the pecuniary penalties were increased. These acts enact that no person shall, under a penalty of 20*l.*, print or publish for sale any newspaper until he shall have entered into a recognizance before a baron of the Exchequer, if such newspaper shall be published in London, Westminster, Edinburgh, or Dublin; or if printed elsewhere, shall have executed in the presence of, and delivered to, some justice of the peace for the county, city, or place where such newspaper shall be printed, a bond to her Majesty, with two or three sufficient sureties, to the satisfaction of the said baron or justice of the peace, in the sum of 400*l.*, if printed in London, or within twenty miles, and in 300*l.* if printed elsewhere, and the sureties in a like sum on the whole. The conditions of the bond are, that the printer or publisher of the newspaper shall pay to her Majesty such fines and penalties as may be imposed upon conviction for printing any blasphemous or seditious libel; and also to pay to any plaintiff in any action for libel published in such newspaper all such damages and costs as may at any time be awarded. The penalties to be recovered in any one day are limited to 100*l.* The liabilities of printers and publishers to the law of libel have been modified by a recent act. [LIBEL.]

The declaration required by 6 & 7 Wm. IV. c. 76, is a document which must be delivered to the office of Stamps and Taxes, or to authorized officers of this department. It sets forth in writing the correct title of the newspaper to which the same shall relate, and the true description of the house or building wherein such newspaper is intended to be printed, and also of the house or building where such newspaper is intended to be published by or on behalf of the proprietor thereof, and setting

forth the true name, addition, and place of abode of every person who is intended to be the printer or to conduct the actual printing of such newspaper, and of every person who is intended to be the publisher thereof. If the number of proprietors, exclusive of the printer and publisher, does not exceed two, their names and places of abode, &c. must be inserted in the declaration; and if the number should exceed two, the names of those proprietors must be inserted whose shares are not less than the share of any other proprietor.

The Advertisement Duty Bond is required as security for the payment of the duties which may from time to time be payable for advertisements inserted in the newspaper. The persons required to enter into this bond are the printer or publisher of a newspaper, or the proprietor, or such one or more of the proprietors as the Commissioners of Stamps and Taxes or their officer may deem requisite, with two sufficient and approved securities. No specific sum is mentioned in the act, but it is left to the Commissioners of Stamps and Taxes, or their officer, to fix such a sum as may appear reasonable.

The stamp on newspapers was imposed by an act, 10 Anne, c. 19, passed in 1712. The amount was one half-penny on "half a sheet or less," and one penny "if larger than half a sheet and not exceeding a whole sheet." The consequence of this duty was, that many of the publications which came within the provisions of the act were discontinued. The duty was raised ½*d.* by 30 Geo. II. c. 19; another ½*d.* by 16 Geo. III. c. 34; by 29 Geo. III. c. 50, another half-penny was added; and by 37 Geo. III. c. 90, an addition of 1½*d.* was at once made, making a total of fourpence. A discount of 20 per cent. was first allowed by the act 37 Geo. III. By 6 & 7 Wm. IV. c. 76, the stamp duty on newspapers in Great Britain was reduced to 1*d.* without any discount. The quantity of letter-press on a sheet of paper bearing a stamp of 1*d.* is limited to 1530 square inches on one side. If it exceeds 1530 square inches, but does not exceed 2295, the stamp is 1½*d.*; above 2295, it is 2*d.* A supplement not exceeding 765 square inches of print on one side published with any newspaper, is chargeable with a duty of ½*d.* The stamp duty on newspapers printed in Ireland is 1*d.*, with an allowance of 25 per cent. discount. The title of every newspaper is now inserted on the stamp; and a newspaper can be printed only on the sheet specifically stamped for printing the same. For several years the number of stamps issued to each newspaper was published in the Parliamentary Returns; but when the notice was last given for printing the return the government objected, and there has been no return since 1843.

The duty on advertisements was reduced, after 5th July, 1833, from 3*s.* 6*d.* to 1*s.* 6*d.* in Great Britain; and to 1*s.* in Ireland. [ADVERTISEMENT.]

Newspaper Statistics. The number of stamps issued to newspapers in Great Britain and Ireland in the following years was as under:—

	Great Britain.	Ireland.
1827	27,659,270	3,545,846
1835	31,533,023	4,290,836
1840	54,560,513	6,057,795
1844	60,201,133	6,769,067

The number of stamps issued for each part of the United Kingdom in 1844 was as follows:—

	Stamps at 1*d.*	Stamps at ½*d.*
England	53,933,848	3,738,128
Wales	479,700	7,000
	54,413,548	3,745,128
Scotland	5,727,585	317,620
Ireland	6,769,067	249,550
Total	66,910,200	4,312,298

In 1835, the year before the reduction of the stamp duty took place, the number of stamps issued in the United Kingdom was 35,823,859. In Great Britain the increase in nine years has been 90 per cent.

The number of newspapers published in the United Kingdom in 1843 was 447: of this number 79 were printed in London; 212 in other places in England; 8 in Wales; 69 in Scotland; and 79 in Ireland. The sum annually expended in newspapers is estimated at 1,250,000*l.*,

while the estimated annual returns of the whole commerce of the press, including weekly publications which are not newspapers, monthly publications, &c., do not exceed 2,085,000*l.* [BOOK TRADE, p. 406.]

In 1843 the number of stamps issued to 79 London newspapers was 31,692,092, or rather more than one-half of the total number issued in Great Britain. The average sale of the daily and other London newspapers in the year 1838, and the number of advertisements, are shown in the following table:—

		Circulation	Advts.
6 daily morning	total	32,574	1,225
5 daily evening	„	12,956	211
4 three times a week	„	8,617	45
3 twice a week	„	6,741	170
33 weekly . .	„	212,807	1,805
	Total	273,695	3,456

Within the last two or three years the 'Times' has issued daily a double paper, that is, eight pages of six columns each. The printed area of the whole paper (both sides) is more than 19½ square feet, or a space of nearly 5 feet by 4. The number of persons employed on such an establishment as the 'Times' is about one hundred, including editors, sub-editors, reporters, readers, clerks, and compositors. Correspondents are besides employed at all the great centres of politics and commerce throughout the world. In the months of September and October, 1845, in consequence of the pressure of railway advertisements, the 'Morning Herald' on several occasions issued three sheets, containing altogether 72 columns, and in the quantity of printed matter equal to a number of the 'Edinburgh Review.' As the stamp duty on each sheet was 1*d.*, and the newspaper was sold at 5*d.*, there was a loss sustained on each copy of the paper sold: and the larger the circulation of the paper, the greater would be the loss. The chief source of profit to the London daily newspapers is derived from advertisements. The activity of the London newspapers in procuring early intelligence is one of their most remarkable features. The 'Morning Chronicle,' in December, 1845, gave a full report of a free-trade meeting at Bradford in Yorkshire, which did not terminate until a late hour on the previous evening. The proprietors of the paper went to the expense of engaging a special engine to bring the report to London. Thus a town two hundred miles off is in some sort made a suburb of the metropolis. The close of the poll at the Sunderland election, in August, 1845, was brought to the 'Times' office in London, and a copy of the paper, containing the intelligence, reached Sunderland before noon the next day, the time in which the journey to and from Sunderland was accomplished being only about twenty hours. This rapidity of communicating intelligence is not without its political influence. Public opinion is developed with an energy and activity which at least have the effect of abridging the period that would otherwise be spent in political agitation.

The circulation of 220 English and Welsh provincial newspapers in 1843 was 17,397,556, or rather more than half the circulation of the London newspapers. The average circulation of each paper was 1576; but several papers have a circulation exceeding 5000. The 'Leeds Mercury' and 'Stamford Mercury' each circulate between nine and ten thousand copies; and a few of the provincial papers contain from two to three hundred advertisements weekly. With two exceptions, at Manchester, all the English provincial papers are published weekly.

The political character of the newspaper press of the United Kingdom at the close of 1842 is shown in the following table: the 'neutral' papers are chiefly trade circulars, and some contain only advertisements:—

	Conservative.	Liberal.	Neutral.
London . .	21	30	39
England, Provincial	89	105	13
Wales . .	3	5	..
Scotland . .	25	32	8
Ireland . .	35	38	4
British Islands .	8	9	..
	181	219	64

NEXT OF KIN. [CONSANGUINITY; ADMINISTRATION.]

NISI PRIUS. This phrase in English law is derived from an ancient writ continued in practice to the present day, in which the words occur. Previously to the time of Edward I., trials by assizes or juries could only take place in the curia regis wherever the king happened to be resident. or before the justices in eyre on their septennial circuits through the several counties of England. But by the stat. 13 Edward I., c. 30 (forming a part of that series of laws commonly called the statute of Westminster 2), the judges were directed to take certain assizes, and also to try certain inquests, by juries in every county not oftener than three times in every year; but the statute required that the day and place in the county in which an issue was to be tried by the judges should be mentioned in the judicial writ which assembled the jury. Instead therefore of the old form of the Venire facias, or writ for summoning the jury, which commanded the sheriff to bring them to Westminster to try the particular cause in which issue had been joined, the writ contained a clause of Nisi Prius, thus:—"We command you that you cause to come before our justices at Westminster on the morrow of All Souls, twelve lawful men, who," &c., unless before (nisi prius) that day, A. B. and C. D., our justices assigned for that purpose, shall come to your county to take the assizes there." It is always so arranged, therefore, that the day for the return of the jury at Westminster shall be more distant than the day for taking the assizes in the county according to the statute; and consequently the reservation or exception in the writ invariably takes effect by the justices of assize coming into the county and trying the cause before the sheriff can obey the writ by returning the jury to Westminster. [ASSIZE.] From this clause in the writ prescribed by the statute of Westminster 2, the phrase Nisi Prius came to be adopted as a general term descriptive of a large class of judicial business which is transacted before judges of the superior courts at the several assizes throughout the country. Thus the judges of assize are called judges of Nisi Prius; when sitting alone to try causes, they are said to be sitting at Nisi Prius; and the law relating to the various matters which arise before them is, somewhat indefinitely, called the law of Nisi Prius. It is commonly, but erroneously stated in our text books, that the judges on their circuits act under a commission of Nisi Prius. This is a common error, derived however from high authority, as it is so stated by Bacon in his 'Essay on the Use of the Law;' but in truth there is no such commission known to our laws, the authority of the judges of Nisi Prius being incidentally annexed to the commissions of assize in the manner above stated. In Middlesex the judges are empowered to sit at Nisi Prius by the statute 18 Eliz., c. 12; and the practice is regulated by several subsequent statutes. In London they sit at Nisi Prius by virtue of immemorial usage, probably continued with occasional variations from very early times, when the king or his chief justiciary distributed justice in the immediate neighbourhood of the royal residence.

NOBILITY, NOBLE. The term nobility is from the Latin Nobilitas, which was used to signify both the rank of a Noble and the whole body of Nobles. We also have the word Nobility in both senses. The original aristocracy of Rome were the Patricians. When the Plebeian body became eligible to the high offices of the state, which occurred in B.C. 366, in which year the first plebeian consul was elected, a new class or order of men arose. Those persons who obtained the consulship became Nobiles, which simply signifies Notables, men distinguished from those who had never enjoyed that honour themselves, or never had an ancestor who had enjoyed it. A person who had not become Nobilis, either in himself or by his ancestors, was called a Novus homo, or new man, a term which was applicable to Cicero before he became consul: after Cicero became consul he was Nobilis. The title which an ancestor thus acquired was transmitted to his descendants, who thus belonged to the order of Nobiles. It follows from what has been stated, that a Nobilis might still be a Plebeian; and that a

Patrician, if there was one whose ancestors had never held the consulship, might not be Nobilis, in this new sense. But probably there was no instance of a Patrician family not having produced a consul. In the later Republic the Patrician families had much diminished, and though the name of Patrician was still a great distinction at Rome, the order which formed the most powerful political body in the State was the order of the Nobility, by which term a certain class of men, as already defined, was contrasted with the Equites, who were also called an order, and with the Plebeians, who were not called an order. The Roman Nobiles had the right to have family busts or figures (imagines), which were kept with care; and they were very careful in preserving their genealogies. Under the later empire a great number of new offices were created, both for the purposes of administration, and in the imperial household. The term Nobilis, under the Republic, did not necessarily imply direct political power; for all the members of a family that had become ennobled were Nobiles, simply by virtue of their ancestors' distinction: but the Nobiles as a class possessed political power, for they mainly formed the Senate, which was the great administrative council, and they laboured to secure the election of their own members to the high offices in the State and to exclude New men. Nor did the possession of any title or office under the empire give political power, for it was a Monarchy. Most of the titles of nobility now in use are derived from the titles of officers under the lower empire, as Duke, and Count; or they are derived from officers that existed under the early Germanic Empire, as Marquis. [COUNT; DUKE; MARQUIS.]

The modern notion of Nobility is that of a title which is hereditary. There are orders of nobility both in Monarchical Governments, as in Russia, and under Republican Governments, as Great Britain. The term Nobility is not co-extensive with the term Aristocracy in any proper sense [ARISTOCRACY]; though the two terms are often confounded. In Great Britain and Ireland the nobility consists of Dukes, Marquises, Earls, Viscounts, and Barons: but it is only the head of the family for the time who has a proper title, though in common language all the members of his family are called noble. Those nobles who are also peers of England or peers of the United Kingdom have a seat in the House of Lords, which political status is transmitted by hereditary descent. Peers of Ireland and peers of Scotland who are not also peers of England, may sit in the House of Lords by election. [LORDS, HOUSE OF; PEERS.] Thus there is in the British empire a class of nobles who have political power by virtue of their nobility, and a class who have not political power by virtue of their nobility, but are on the same footing as other commoners. Also the children of peers of England are on the same footing as other persons so long as the head of the family lives; upon whose death the next heir alone succeeds to the title and the political privileges. The junior members of noble families receive by courtesy certain titles and distinctions of name, and wives of peers have some privileges. [PEERS.] In the British empire nobility is conferred by the king or queen regnant, though in fact the ministry for the time determine who shall receive this mark of royal favour. The present mode of conferring a title of nobility is by letters patent, which also declare the course in which the title shall descend. [PEERS.]

The peerage of England is constantly receiving new accessions, without which the body would, in the course of time, be much diminished, for most of the titles descend only to the heirs male of the body of the person ennobled. The honour may be conferred on any person, but the class of persons who have been hitherto ennobled as peers of England may be reduced to the following: peers of Scotland and Ireland; members of families already ennobled; persons of large landed property; distinguished lawyers, military and naval commanders, and persons who take an active part in political life; and some few who have acquired great wealth in commerce, and been active members of the House of Commons. Men distinguished as in-

ventors, and in science and literature, are rewarded by the crown with baronetcies, which do not confer nobility, though the title is hereditary; or with knighthood, of which there are various kinds. The title conferred by a baronetcy or knighthood consists in a "Sir" prefixed to the name of the person, and his wife is distinguished by the title of Lady. There is, we believe, no instance of nobility being conferred by the crown for any scientific or literary eminence.

A patent of English nobility confers both a title and political power; among other powers the power of voting on the making or repealing of all laws; and the noble may vote whether he is present or absent, whether he knows what he is voting about, or does not. [PEERS.] A man also votes, whether he is competent by talent and education to judge of the matter on which he votes, or whether he is not competent. The English nobility in fact exercise a power analogous to that of the crown, and the power goes by descent so long as there are heirs to whom it can descend. The order however is always receiving new vigour by the fresh creations, which bring into it new men (novi homines), who are generally among the most active members of the House of Lords. The sons of peers also frequently serve a kind of apprenticeship to political life, by obtaining seats in the House of Commons, where they become well acquainted with the business of administration. Many of them in this manner obtain as just views of the general interest, and are as well disposed to promote it, as any member whom the people may send to the House of Commons. This discipline which a peer may receive and often does receive in the House of Commons, and the introduction of new members into the English nobility out of the body of the people, are the two elements which have secured to the peers of England the power which they possess. Without this renovating process the political power of the English nobility would long since have died a natural death, or have been destroyed. The popular character of the English nobility is clearly shown by an examination into the titles of those who compose that body. Few of the old baronial families are now found among the nobles of England: the great mass are not a century and a half old, and a very great number do not go back half a century; a large part of them have sprung from men who were raised to nobility from low estate, for some great public service real or supposed, or for various other reasons, of which the political history of England readily supplies instances. There are many untitled families in England that have much higher claims to antiquity and illustrious descent, than one-half of the modern nobility.

When nobility is merely a title, it is a cheap mode of rewarding public services or conferring an honour as a favour. But such titles of honour are inconsistent with any form of government where there is not a king or other person with some like title at the head of the State. When nobility also confers political power, which is transmitted by hereditary descent, there is no other way of conferring it except by the gift of one who is at the head of the State by hereditary descent. The creation of a noble is a thing that cannot be conceived except under a form of government in which there is an hereditary head. Nobility may be and is conferred in England, both where the honour is deserved and where it is undeserved. But as the gift is not for life only, but is a descendible honour, if the first possessor of the honour should be willing to purchase it by unworthy means or should be undeserving of it, he who succeeds him in the honour may show himself more deserving of it, and may be an independent man. The crown on the whole cannot secure partizans by new creations. But in fact the crown has now no opposing interests to those of the nation: the king enjoys ample respect and an ample allowance to maintain the splendour of his exalted station; the prerogative is well ascertained, and the exercise of the royal authority, by the agency of responsible ministers, is kept within well-defined limits. The king of the British Empire is now not the mere head of a body of feudal nobles; he is the first person in rank of many millions of wealthy and industrious persons, who by their representatives share with him

and the peers of the realm the most important of the functions of government, and possess an almost unlimited control over the grant and application of money for public purposes. The English nobles still possess great political power, and they have interests, real or supposed, which are adverse to those of the body out of which most of them have sprung. To weigh with fairness in opposite scales the evil and the good that we now owe to the existence of this order, as a political body, would require a coolness of judgment and a degree of political discrimination which belong to few men. In forming such an estimate, the exclusive advantages, real and imaginary, which the order enjoys, must be left out; for in calculating the national value of any privilege given to a small number, such as patent privileges for invention, by way of instance, we do not estimate what the privileged individuals will get by the privilege, but what advantage the whole nation will get by it. If there were no general advantages derived from the grant of an exclusive privilege, there would be no reason for granting it or continuing it.

Nobility, which consists merely in title and certain claims of precedence and so forth, must be distinguished from Nobility which is accompanied with political privileges. There may be nobility without political privileges, as in the case of Scotch and Irish peers who are not peers of the realm; and there may be members of the House of Lords, who are not peers of the realm, and only sit in the House of Lords for life, as the representative peers of Ireland, and the bishops and archbishops of England; and of persons who sit for certain periods, as the representative peers of Scotland, and the bishops and archbishops of Ireland, who sit according to a certain established cycle. The members of the Lords' House thus consist of persons who are entitled to sit there by hereditary claim, of persons who are elected by their own peers, and of persons who are nominated by the crown to places which give them a seat for life or for certain periods.

There are modern communities such as the United States of North America, in which there is and can be no nobility in any respect resembling that of Europe. Wealth of course gives some influence and importance to the possessor, but it is also an object of jealousy, which must always be the case, more particularly in democratic constitutions. Office, so long as it is held, gives greater distinction than wealth; but office is only held for a short time, and wealth, although it may be acquired by an individual, is seldom transmitted to a single person, but is usually distributed in moderate or small portions among several persons. Thus it has been observed, that in the United States a family seldom maintains any great wealth or importance for more than two generations. Names which have been made illustrious by an individual are remembered only because of him who first elevated them to distinction, and the descendants of the wealthy lose with their wealth the remnant of that importance which their ancestor acquired. Thus one family of distinction after another sinks into obscurity, and its place is soon filled by a name before unknown.

NOMINATION. [ADVOWSON; BENEFICE.]

NONCONFORMISTS. Nonconformity is the term employed to designate Protestant dissent from the Church of England. It was in the reign of Edward VI. that the English reformed church first received a definite constitution. During the time of Henry VIII. it remained in a great measure unsettled, and was subject to continual variation, according to the caprice of the king. As organised by Edward, while Calvinistic in its creed, it was Episcopalian in its government, and retained in its worship many of the Roman Catholic forms and observances. In the first of these particulars it resembled and in the last two it differed from the Genevan church. During the temporary restoration of the Roman Catholic faith under the administration of Philip and Mary, great numbers of the persecuted followers of the reformed faith sought refuge in France, the Netherlands, Switzerland, and other parts of the Continent. Of those who fled to Germany, some observed the ecclesiastical order ordained by Edward; others, not without warm disputes with

their brethren, which had their commencement at Frankfort, adopted the Swiss mode of worship, preferring it as more simple, and more agreeable to Scripture and primitive usage. Those who composed this latter class were called Nonconformists. The distinction has been permanent, and the name has been perpetuated. Queen Elizabeth's accession to the throne, in 1558, opened the way for the return of the exiles to the land of their fathers. It was natural for each of the parties of which they consisted, to advocate at home the systems of worship to which they had been respectively attached while abroad; and the controversy, which had been agitated by them in a foreign country, immediately became a matter of contention with the great body of Protestants in their own. It suited neither the views nor inclinations of Elizabeth to realise the wishes of the Nonconformists, or Puritans, as they began to be called, by giving her sanction to the opinions which they maintained, and assenting to the demands which they made. The plain and unostentatious method of religious service which they recommended did not accord with that love of show and pomp for which she was remarkable; and the policy of the early part of her reign, in which she was supported by the high dignitaries both in the church and state, was to conciliate her Roman Catholic subjects, who in rank, wealth, and numbers far exceeded the Nonconformists. The liturgy of Edward VI. having been submitted to a committee of divines, and certain alterations, which show a leaning to the Roman Catholic church rather than to Puritanism, having been made, the Act of Uniformity (1 Eliz. c. 2) was passed, which, while it empowered the queen and her commissioners to "ordain and publish such further ceremonies and rites" as might be deemed advisable, forbade, under severe penalties, the performance of divine worship except as prescribed in the Book of Common Prayer. By § 14 a penalty of 12*d.*, to be levied by the churchwardens, was imposed on persons who did not frequent the parish church. This penalty of 12*d.* is repealed, but only so far as dissenters are concerned. [LAW, CRIMINAL, p. 38.] The act was only partially carried into effect from the time of its being passed, in 1558, to 1565. But in 1565 it began to be rigidly enforced, and many of the Nonconformists were deprived of their preferments (for notwithstanding their sentiments, most of them had still remained in connection with the Established Church, being from principle averse to an entire separation); many also were committed to prison. The High Commission Court [ESTABLISHED CHURCH, p. 849] became still more severe in the exercise of its power. The act 23 Eliz. c. 1, § 5, provided that "every person above the age of fifteen who shall not repair to some church, chapel, or usual place of common prayer, but forbear the same contrary to 1 Eliz. c. 2, shall forfeit 20*l.* a month; and if any such person forbore to attend church for twelve months, he was to be bound with two sureties in 200*l.* at least, and so to continue bound until he conformed. In §§ 6 and 7 of this statute it is enacted that "if any person or persons, body politic or corporate, shall keep and maintain any schoolmaster which shall not repair to church as is aforesaid, or be allowed by the bishop or ordinary of the diocese, they shall forfeit 10*l.* a month;" and it was further provided that "such schoolmaster or teacher presuming to teach contrary to this act shall be disabled to be a teacher of youth and be imprisoned for a year." By another statute (29 Eliz. c. 6, §§ 4, 6), it was enacted that persons who had been once convicted of not attending divine service contrary to 23 Eliz. c. 1, were, for every month afterwards until they conformed, to pay into the Exchequer, without any other indictment or conviction, in every Easter and Michaelmas term, as much as should then remain unpaid at the rate of 20*l.* a month; and in default of payment, the queen might, by process out of the Exchequer, seize all the goods and two-thirds of the lands of such offenders. By 3 Jac. I. c. 4, § 11, the king might refuse the payment of 20*l.* a month, and take two parts of the offender's land at his option. Towards the close of Elizabeth's reign the offence of Nonconformity and its further progress was attempted to be stopped by another statute (35 Eliz.

c. 1), which provided (§ 1) that any person above the age of sixteen who obstinately refused to attend divine service, and who, by printing, writing, or speech, denied her majesty's power and authority in causes ecclesiastical, and who advised persons to abstain from church or from the communion or to be present at unlawful assemblies, conventicles, or meetings under colour or pretence of any such exercise of religion, shall be committed to prison until he shall conform to go to church and make submission. If a person who was convicted under this act did not conform within three months, he was then required to abjure the realm and all other the queen's dominions for ever, and he was compelled to depart out of the kingdom at some port assigned and within such time as the justices might appoint. A person who refused to leave the country under these circumstances, or who having left it returned to it again without the queen's licence, was guilty of felony without benefit of clergy. These provisions, though directed principally against the Roman Catholics, affected the Protestant Nonconformists with equal severity.

The Nonconformists, during the age of Elizabeth, are not to be regarded as an unimportant faction. Both among the clergy and the laity they were a numerous body; and they would have been powerful in proportion to their numbers, had they only been more closely united among themselves. A motion, made in 1561, at the first convocation of the clergy which was held in England, to do away with the ceremonies and forms to which the Puritans objected, was lost by a majority of only one, even though the queen and the primate Parker were well known to be opposed to such a change. In the Commons the Puritan influence was strong, and they might have expected that their remonstrances would be listened to, and their grievances redressed. Nor would it have been a difficult matter to yield to the claims of the Nonconformists. The moderate among them sought not the overthrow of the ecclesiastical constitution, but contended merely that certain rites and observances, which they regarded as departures from the purity and simplicity of Christian worship, should be dispensed with; and, generally, that matters commonly recognised as things indifferent should not be insisted on as indispensable. Doubtless many were less reasonable in their demands, and injustice and persecution tended much to increase their number. A party, at the head of which was Professor Cartwright, of Cambridge, desired a change, not only in the forms of worship, but in church polity also, and would have substituted Presbytery in the room of Episcopacy. Another party, the Independents, or Brownists, as they were then termed, wished the disseverment of the connection between church and state altogether. Still there is every reason to believe that slight concession to the demands of the less violent, and the display of a spirit of forbearance, would have satisfied many, would have allayed the dissatisfaction of all, and would have been the reverse of disagreeable to the country generally. Unfortunately an opposite course of policy in this and subsequent reigns was chosen; which ultimately conducted to a civil war, and the temporary subversion of the regal authority.

Queen Elizabeth died in 1603, and was succeeded by James VI. of Scotland. From one who like him had been the member of a Presbyterian church, and had on more than one occasion expressed his decided attachment to its principles and worship, the Nonconformists, not without reason, expected more lenient treatment than they had met with in the preceding reign. But their expectations were bitterly disappointed. In compliance with their petitions, a conference was indeed appointed and held at Hampton Court, at which nine bishops and as many dignitaries were present on the one side, and four Puritan ministers, selected by James, on the other. The king himself presided and took part in the debate. But no good results ensued. The Nonconformist representatives were loaded with insults, and dismissed in such a manner as might well give birth to the darkest anticipations regarding the fate of the party to which they belonged. Shortly after, a few slight alterations of the national rubric were made, and a

proclamation issued requiring the strictest conformity. In 1604 the book of canons was passed by a convocation, at which Bishop Bancroft presided. [CONSTITUTIONS AND CANONS, ECCLESIASTICAL; ESTABLISHED CHURCH, p. 848.] It denounced severe temporal and spiritual penalties against the Puritan divines, and was followed up by unsparing persecutions. By 3 Jac. I. c. 4, § 32, a penalty of 10*l.* a month was imposed on any person who maintained, relieved, kept, or harboured in his house any servant, sojourner, or stranger who, without reasonable excuse, forbore to attend the church for a month together. By 21 Jac. I. c. 4, § 5, it was enacted that actions against persons for not frequenting the church and hearing divine service might be laid in any county at the pleasure of the informer.

In spite, however, of all the means employed for its eradication, the cause of Nonconformity advanced. In the church itself there were many of the clergy who held the Puritan opinions, though they deemed it inexpedient to make a very open display of them, and who sighed for a change; and the number of such was largely augmented by the alteration which James made in his creed, from Calvinism to the doctrines of Arminius.

Charles I. adopted towards the Nonconformists the policy of his predecessors. His haughty temper and despotic disposition speedily involved him in difficulties with his parliament and people. In carrying into execution his designs against Puritanism, he found an able and zealous assistant in Archbishop Laud, under whose arbitrary administration the proceedings of the Star Chamber and High Commission Court were characterised by great severity. Many Puritans sought for safety and quiet in emigration; and the colony of Massachusetts Bay was founded by them in North America. But a proclamation by the king put a stop to this self-banishment; and thus even the miserable consolation of expatriation was denied. Hundreds of Puritan clergymen were ejected from their cures, on account of their opposition to the Book of Sports, published in the previous reign. Calvinism was denounced by royal authority, and severe restrictions laid on the modes and times of preaching. But a change was approaching. In 1644 Laud was declared guilty of high treason and beheaded; and about five years after, Charles shared the same fate. The parliament abolished Episcopacy and everything in the church that was opposed to the model of the Genevan church.

During the Protectorate, Presbytery continued to be the established religion. Independency, however, prevailed in the army, and was in high favour with Cromwell. Under his government the sects of the Quakers and Baptists flourished; and other sects, some of which held the wildest and most visionary tenets, sprung into existence. All were tolerated. Episcopacy only was proscribed; and the Nonconformists, in their hour of prosperity, forgetful of the lessons which adversity should have taught them, directed against its adherents severities similar to those of which they themselves had been the objects.

The Restoration, in 1660, placed Charles II. on the throne of his ancestors, and led to the restitution of the old system of church government and worship. Another Act of Uniformity (14 Car. II. c. 4) was passed in 1662, by which all who refused to observe the rites as well as subscribe to the doctrines of the Church of England were excluded from its communion, and in consequence exposed to many disadvantages and to cruel sufferings. During the same reign was passed the Conventicle Act (16 Car. II. c. 4), which subjected all who presumed to worship God otherwise than the law enjoined to fine and imprisonment, and punished the third offence with banishment; the Five-Mile Act (17 Car. II. c. 2), which banished to that distance from every corporate town where they had formerly preached the Nonconformist clergy, and forbade them to officiate as schoolmasters except on condition of their taking the oath of passive obedience; and the Corporation Act (13 Car. II. st. 2, c. 1), which, though directed against the Roman Catholics, pressed with equal severity against Protestant dissenters, and excluded from offices in municipal corporations those who refused to receive the eucharist ac-

cording to the rubric of the Church of England. This was followed by the Test Act (25 Car. II. c. 2), which required all persons who held any office under the crown, civil or military, to take the oaths of supremacy and allegiance, to subscribe a declaration against transubstantiation, and to take the sacrament of the Lord's Supper according to the usage of the Church of England. This act, although directed against the Roman Catholics, equally affected the Nonconformists. The act 22 Car. II. c. 1, for preventing and suppressing seditious conventicles, punished every person above the age of sixteen who was present at a conventicle by a fine of five shillings for the first, and of ten shillings for every subsequent offence; and the penalty for teaching or preaching in a conventicle was made 20*l.* for the first, and 40*l.* for each subsequent offence. Persons who suffered conventicles to be held in their houses were made liable under this act to a fine of 20*l.*, and justices of the peace were empowered to break open doors where they were informed conventicles were held, and take the offenders into custody.

In the reign of William III. the Toleration Act (1 Wm. III. c. 18) gave immunity to all Protestant dissenters, except those who denied the Trinity, from the penal laws to which they had been subjected. The preamble alleges that "Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their majesties' Protestant subjects in interest and affection," be it enacted that none of the following statutes: 23 Eliz. c. 1; 29 Eliz. c. 6; 1 Eliz. c. 2, § 14; 3 Jac. c. 4; 3 Jac. c. 5; nor any other law or statute of this realm made against papists or popish recusants (except the 25 Car. II. c. 2, and the 30 Car. II. st. 2, c. 1), shall be construed to extend to any person dissenting from the Church of England that shall take the oaths of allegiance and supremacy and make and subscribe the declaration against popery required by 30 Car. II.; and such persons shall not be liable to any pains or penalties or forfeitures mentioned in 35 Eliz. c. 1, and 22 Car. II. c. 1. But if any assembly of persons who dissented from the Church of England were held in any place for religious worship with the doors locked during any time of their meeting, they were liable to the penalties of all the foregoing laws recited in the act. By § 8 it was provided that "no person dissenting from the Church of England, in holy orders, or pretended holy orders, or pretending to holy orders, nor any teacher or preacher of any congregation of dissenting Protestants, that shall make and subscribe the declaration aforesaid and take the said oaths," "and shall also declare his approbation of and subscribe the articles of religion mentioned in the statute of 13 Eliz. c. 1 (except the 34th, 35th, and 36th, and these words of the 20th article, viz. 'the church hath power to decree rights or ceremonies, and authority in controversies of faith, and yet'), shall be liable to any of the pains and penalties of the 17 Car. II. c. 2, or the penalties mentioned in the said act of 22 Car. II. c. 1, by reason of preaching at any exercise of religion, nor to the penalty of 100*l.* by 13 & 14 Car. II. c. 4, for officiating in any congregation for the exercise of religion permitted and allowed by this act."

The benefits conferred by the Toleration Act were subsequently much abridged by the Occasional Communion Bill, which excluded from civil offices those Nonconformists who, by communion at the altars of the Church, were by the provisions of the Test Act qualified to hold them; and by the Schism Bill (repealed by 19 Geo. III. c. 24), which restricted the work of education to certificated churchmen. By 5 Geo. II. c. 4, it was enacted that if any "mayor, bailiff, or other magistrate" should go in his gown or attended by the ensigns of his office to any public meeting for religious worship, he should be disabled not only from holding such office, but any public office or employment whatsoever. By the repeal of the Corporation and Test Acts in 1828 (9 Geo. IV. c. 17) [ESTABLISHED CHURCH, p. 851], and by the passing of the acts relating to registration and marriage dissenters have been allowed the peaceable enjoyment of their religion.

By the act 52 Geo. III. cap. 155, it is

provided that any congregation of Protestants amounting to twenty shall be registered in the Diocesan's court and at the quarter-sessions of the peace, under a penalty not exceeding 20*l.* nor less than 20*s.* The cost of registering at the quarter-sessions is two guineas. Nonconformist places of worship may be registered for the solemnization of marriages on application to the register-general by certificate, which must be signed by twenty householders who have used such place of worship for one year. (6 & 7 Wm. IV. c. 85, § 18.) Persons who preach or teach religion in a nonconformist place of worship shall, when required by a magistrate, take the oath and make the declaration specified in 19 Geo. III., professing themselves to be Christians and Protestants, and that they believe the Scriptures to contain the revealed will of God, and to be the rule of doctrine and practice. A nonconformist preacher or teacher may require a magistrate to administer the above-mentioned oath and to give him a certificate thereof. This certificate exempts him from serving in the militia and certain civil offices, in case he follows no other secular occupation except that of schoolmaster. No congregation is allowed to meet with the door locked or otherwise fastened, under penalty of a sum not exceeding 20*l.* nor less than 40*s.* When the place of worship is duly registered and the preacher or teacher has obtained a certificate in the manner already mentioned, any person who wilfully disturbs the minister or any one of the congregation, is liable, on conviction at the quarter-sessions, to a penalty of 40*l.* Dissenters from the church are now in some respects in a better position than those who belong to it, for members of the established church are not within the benefit of the Toleration Acts. [LAW, CRIMINAL, p. 217.]

It would be a task of some difficulty to enumerate the various sects which may be classed under the general head of Nonconformists. The chief denominations are the Presbyterians, Independents, Baptists, Wesleyan and Calvinistic Methodists, and Quakers. Most of the minor sects of dissenters may be considered as only subdivisions of or included in the above denominations. The entire number of Protestant dissenters in England and Wales has been estimated at 2,500,000, including the Methodists, who may amount to about 1,200,000. The number of marriages which are not celebrated in conformity with the rites of the Established Church represent a population of about 1,160,000. [MARRIAGE, p. 325.] The most numerous classes of dissenters in Scotland originated in a separation from the established church in 1740. They are called generally Seceders, and are divided into Burghers, Anti-Burghers, Original Burghers, and Original Seceders. There are also the body of dissenters called the Relief Church, who separated from the establishment in 1758; and the Free Church, who separated in 1842. The only considerable body of Scottish dissenters of older standing, with the exception of the Episcopalians, are the Cameronians, or Reformed Presbyterian Synod, who are the representatives of the Covenanters of the seventeenth century. A few years ago Mr. Macculloch calculated the whole number of dissenters in Scotland (exclusive of about 140,000 Roman Catholics) at about 360,000 or 380,000 persons. In Ireland, exclusive of the Roman Catholics, who alone outnumber the adherents of the established church in the proportion of 7½ to one, the principal dissenters are the Presbyterians, who are mostly confined to the province of Ulster. The Irish Presbyterians amount to between 600,000 and 700,000, and are more than twenty times as numerous as all the other bodies of dissenters in that country put together.

NON COMPOS MENTIS. [LUNACY.]

NON-RESIDENCE. [BENEFICE, p. 348.]

NORROY. [HERALD.]

NOTARY. This word is derived from the Roman name *notarius*, a person who was so called from his taking down in notes or writing (notæ) the words of a speaker. The *notarii* were in fact shorthand writers, and it is clear from many passages of ancient writers that they used symbols of abbreviation. It may be sufficient to quote the two following passages:—

'Hic et scriptor erit felix cui litera verbum est,
Quique notis linguam superat cursumque loquentis,
Excipiens longas nova per compendia voces.'
Manilius, *Astronom.*

'Currant verba licet, manus est velocior illis,
Nondum lingua suum, dextra peregit opus.'
Martial, *Epig.* xii. 208.

It seems that they were also employed to take down a man's will in writing. The notarii were often slaves. The word is also sometimes used to designate a secretary to the princeps or emperor. (Ausonius, *Epig.*, 136; Gregor. Nazianz., in the letter inscribed τῷ Νοταρίῳ; Augustin, lib. ii., 'De Doctrina Christiana;' *Dig.* 29, tit. 1, sec. 40; Lampridius, *Alex. Sev.*, 28; see also the references in Facciolati, *Notarius*)

In the fourth century the notarii were called Exceptores, and were employed by the governors of the Roman provinces to draw up public documents. But the persons mentioned under the later Roman law, who corresponded most nearly to the modern notary, are called tabelliones; their business was generally to draw up contracts, wills, and other instruments. The forty-fourth Novel treats specially of the tabelliones (περὶ τῶν συμβολαιογραφῶν); and they are spoken of in various other parts of the Novels, and in the Code. (*Cod.* xi., tit. 53, &c.) It appears clear that as the word notarius is the origin of the modern term notary, so the tabellio is the person from whom were derived the functions of the modern notary public.

It is impossible to say when persons under the name and exercising the functions of notaries were first known in England. Spelman cites some charters of Edward the Confessor as being executed for the king's chancellor by notaries. (*Gloss.* tit. *Notarius.*) "Notaries," are mentioned with "procurators, attornies, executors, and maintainours," in the stat. of 27 Edward III. c. 1. They were officers or ministers of the ecclesiastical courts, and may therefore have been introduced into this country at a very early period. It is generally supposed that the power of admitting notaries to practise was vested in the archbishop of Canterbury by the 25 Hen. VIII. c. 21, § 4. The term of service and the manner of admission to practise are regulated by the 41 Geo. III. c. 79, amended by 6 & 7 Vict. c. 90 The first of these acts prescribed that no person in England should act as a public notary or do any notarial act unless he was duly sworn, admitted, and enrolled in the court wherein notaries have been accustomarily sworn, admitted, and enrolled. By 41 Geo. III. a person must also have been bound by contract in writing, or by indenture of apprenticeship, to serve as a clerk or apprentice for seven years to a public notary, or to a scrivener using his art and mystery according to the privilege and custom of the city of London, and also being a notary, who has been duly sworn, admitted, and enrolled; but in the preamble to the act 6 & 7 Vict. it is stated that "whereas doubts have arisen whether a public notary, being also an attorney, solicitor, or proctor, can have and retain any person to serve him as a clerk or apprentice in his profession or business of a public notary, and also at the same time as that of an attorney, solicitor, or proctor, and whether such service is in conformity with the provisions of the said act" (41 Geo. III. c. 79); and it is then enacted that persons who have so served are not disqualified; but no public notary can retain a clerk unless in actual practice; and by 6 & 7 Vict. a term of five years is sufficient. An affidavit of the execution of the contract must also be made and filed, as the act prescribes, in the proper court, and the affidavit must be produced and read at the time of the person's admission and enrolment as a public notary, in the Court of Faculties, which is the proper court for admitting and enrolling notaries. The proper persons for taking and filing the affidavits are the master of the faculties of the archbishop of Canterbury, in London, his surrogates or commissioners. The Master of the Faculties is authorized by the act 6 & 7 Vict. to make rules requiring testimonials or proofs as to the character, integrity, ability, and competency of persons who apply for admission or re-admission; but from his decision there is an appeal to the Lord Chancellor. Persons who act as notaries for reward, without being properly admitted and

enrolled, are liable for every offence to forfeit and pay the sum of 50*l.*; but British consuls abroad are empowered to perform notarial acts (6 Geo. IV. c. 87, § 20). The licence or commission for acting as a notary in England requires a stamp duty of 30*l.*, and in Scotland one of 20*l.* An annual certificate is also required. Notaries public who practise within the jurisdiction of the incorporated Company of Scriveners of London must become members of and take their freedom of that company under the acts of the 41st Geo. III. and 6 & 7 Vict. Instead of the oath of office formerly taken, the act 6 & 7 Vict. requires, in addition to the oaths of allegiance and supremacy, a new oath* for the honest and faithful discharge of their duties; the oaths of allegiance and supremacy are dispensed with in cases provided for by law; and a declaration is substituted for an oath under similar circumstances.

The original business of notaries was to make all kinds of legal instruments: they are often spoken of in former times as the persons who made wills (Shepherd's *Touchstone*, vol. ii., 407, Preston's ed.); but the attorney and solicitor have now got possession of this part of their business. In practice their business is now limited to the attestation of deeds and writings for the purpose of giving them such authenticity as shall make them admissible as evidence in other countries, but principally such as relate to mercantile transactions. It is also their business to make protests of bills of exchange. They also receive and take the affidavits of mariners and masters of ships. Notaries are mentioned with serjeants-at law, barristers, solicitors, attorneys, and others (44 Geo. III. c. 98, § 13), as the persons who may, for fee or reward, draw or prepare conveyances or deeds relating to real or personal estate, or proceedings in law or equity. A recent act (5th & 6th William IV. c. 70, § 5) provides that in cases of such actions or suits being brought in any court of law or equity within any of the territories or dependencies of Great Britain abroad, as in the act mentioned, public notaries, with other persons named in the act, are authorized to receive solemn declarations in writing, in the form prescribed by the act; and such declarations, when certified under their signature and seal, and transmitted, shall be allowed in all such actions and suits to have the same force as if the persons making the declarations had appeared and sworn or affirmed the matters therein contained in open court, or upon a commission issued for the examination of witnesses.

NOTE AND BILL. [MONEY, p. 358.]

NOTES, BANK. [BANK; MONEY, p. 355.]

NOVELLÆ. [JUSTINIAN'S LEGISLATION.]

NUISANCE, or NUSANCE, is a term derived immediately from the French *nuisance*, and ultimately from the Latin *nocere* "to hurt;" it signifies an unlawful act or omission which occasions annoyance, damage, or inconvenience to others. Nuisances may either be illegal acts or omissions of legal duties, and are of two kinds, *common* or *public* nuisances, which affect all persons, and *private* nuisances, which injure individuals. Among common nuisances are, annoyances in highways, public bridges, or navigable rivers, which are produced by rendering the passage inconvenient or dangerous, either positively by actual destruction, or negatively by omitting to repair in cases where the law imposes the duty of repairing.

Noxious processes of trade or manufacture in towns are common nuisances by reason of the danger to the health of the inhabitants; and brothels, disorderly alehouses, gaming-houses, and unlicensed stage-plays are held to be common nuisances, both on account of the injury alleged to be done by them to public morals and of the danger to the public peace

* The oath is as follows:—"I, A. B., do swear, That I will faithfully exercise the office of a Public Notary: I will faithfully make contracts or instruments for or between any party or parties requiring the same, and I will not add or diminish anything without the consent of such party or parties that may alter the substance of the fact; I will not make or attest any act, contract, or instrument in which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business of a public notary, according to the best of my skill and ability."

by drawing together dissolute persons. The remedy for a public nuisance is by presentment or indictment; and the offender, upon conviction, may be punished by fine and imprisonment. It is said also that in the case of a positive obstruction to the free enjoyment of a public right, it may form part of the judgment that the offender shall remove the nuisance at his own cost; "and it seemeth to be reasonable," says Hawkins (book i., ch. 75, sect. 15), that those who are convicted of any other common nuisance should also have the like judgment."

Private nuisances are annoyances which affect individuals only. Thus, if my neighbour builds a house so near to mine that he obstructs my ancient lights, or throws the water from his roof upon my house or land, this is a private nuisance; so also if he keeps noisome animals, or sets up an offensive trade or hazardous manufactory so near to my dwelling-house that the free enjoyment of my property is interrupted either by injury to my health or comfort, or the apprehension of danger. The remedy for a private nuisance is an action upon the case, in which damages may be recovered according to the injury sustained.

The *abatement* of a nuisance is literally the *beating* down or destruction of a nuisance. A man may abate a nuisance, that is, remove it, if he commits no breach of the peace in abating it, and does no more injury to the thing which is a nuisance than is necessary for abating it. If a gate or other obstacle is placed across a public road, any man may abate it; and if a man builds a wall, for instance, which obstructs a man's ancient lights, he may pull down the wall, subject to the condition already mentioned.

NULLIFICATION. [UNITED STATES, CONSTITUTION OF.]

NULLITY OF MARRIAGE. [MARRIAGE, p. 326.]

NUN. [MONK, p. 365.]

NUNCIO (*Nunzio*, in Italian; *Nuntius*, in Latin) signifies a messenger, but is used more particularly to designate the ambassadors sent by the pope to foreign courts. The nuncio is generally a prelate of the court of Rome; if a cardinal, he is styled "legate." Previous to the Council of Trent, the papal nuncios in foreign countries acted as judges, in the first instance, of matters which were within ecclesiastical jurisdiction; but since that time they have acted as judges of appeal from the decisions of the respective bishops, in those countries only which are subject to the decretals and discipline of the council of Trent. In other kingdoms and states, such as France, Austria, Tuscany, &c., which, though Catholic, hold themselves independent of the court of Rome in matters of discipline, the nuncio has no jurisdiction whatever, and has merely a diplomatic character, like the minister of any other foreign power. [LEGATE.] (Père Richard, *Bibliothèque Sacrée*, art. "Nonce.")

NUNCUPATIVE WILL. [WILL.]

O.

OATH. Oaths have been in use in all countries of which we have any exact information, and it is probable that there is no nation which has any clear notion of a Supreme Being, or of superior beings, that does not make use of oaths on certain solemn occasions. An oath may be described generally as an appeal or address to a superior being, by which the person making it engages to declare the truth on the occasion on which he takes the oath, or by which he promises to do something hereafter. The person who imposes or receives the oath, imposes or receives it on the supposition that the person making it apprehends some evil consequences to himself from the superior Being, if he should violate the oath. The person taking the oath may or may not fear such consequences, but the value of the oath in the eyes of him who receives or imposes it consists in the opinion which he has of its influence over the person who takes it. An oath may be taken voluntarily, or it may be imposed on a person under certain circumstances by a political superior; or it may be the only condition on which the assertion or declaration of a person shall be admitted as evidence of any fact.

The form of taking the oath has varied

greatly in different countries. Among the Greeks, a person sometimes placed his hand on the altar of the deity by whom he swore, but the forms of oaths were almost as various as the occasions. Oaths were often used in judicial proceedings among the Greeks. The Dicastæ, who were judges and jurymen, gave their verdict upon oath. The Heliastic oath is stated at length in the speech of Demosthenes against Timocrates (c. 36). It does not appear that the oath was always imposed on witnesses in judicial proceedings; and yet it appears that sometimes witnesses gave their evidence on oath: perhaps the oath on the part of witnesses was generally voluntary. (Demosth., Πρὸς Ἄφοβον Ψευδ, c. 16; Κατὰ Κόνωνος, c. 10; and Meier and Schömann, *Att. Process.*, p. 675.)

In the Roman jurisprudence, an oath was required in some cases from the plaintiff, or the defendant, or both. Thus the oath of calumny was required from the plaintiff, which was a solemn declaration that he did not prosecute his suit for any fraudulent or malicious purpose. The offence of false-swearing was *perjurium*, perjury; but it was considered a less offence in a party to a suit when the oath was imposed by a *judex* than when it was voluntary. It does not appear that in civil proceedings witnesses were necessarily examined on oath; but witnesses appear to have been examined on oath in the judicia publica, which were criminal proceedings. The title in the *Digest*, 'De Testibus' (22, tit. 5), makes no mention of the oath, though it speaks of punishment being inflicted on witnesses who bore false testimony.

The law of England, as a general rule, requires all evidence or testimony for judicial purposes to be given on oath, and all persons may be sworn as witnesses who, being questioned on the occasion of taking the oath, will declare their belief in the existence of God, in a future state of rewards and punishments, and who will further declare their belief that perjury will be punished by the Deity. This rule permits all persons, of all religious persuasions, who profess to have the necessary belief, to be sworn as witnesses; and it excludes all other persons from being witnesses. A Jew, a Mohammedan, and a Hindu may be sworn as witnesses, but they must severally take the oath in that form which is sanctioned by the usage of their country or nation, and which they severally consider to be binding. It follows that a person who professes atheism, or who does not profess such belief as is stated above, cannot be sworn, and consequently cannot be admitted to give testimony for judicial purposes. Children also who are too young to understand the nature of an oath, and adults who are too ignorant or too weak in intellect to understand what is meant by an oath, cannot be sworn as witnesses. The offence of declaring what is false, when a witness is examined upon oath, constitutes Perjury. [LAW, CRIMINAL, p. 25.]

Declarations made by a person under the apprehension of immediate death are generally admitted as evidence in judicial proceedings, when properly verified; for it is considered that the circumstances in which the person is placed at the time of making the declaration, furnish as strong motives for veracity as the obligation of an oath. Quakers also, in all civil cases, were allowed by the statute 7 & 8 Wm. III. c 34, to give their evidence on affirmation; and now the affirmation of Quakers and Moravians is admissible in all judicial proceedings, both civil and criminal. When a defendant in chancery is entitled to privilege of peerage, or as a lord of parliament, he is required to give his answer to a bill upon honour only; and in the case of a corporation, the corporate body defendants put in their answer under their common seal. Other defendants are required to put in their answer upon oath. For other matters connected with judicial evidence see EVIDENCE.

An oath is required in England in a great many cases besides judicial proceedings, as for instance, on admission to places of public trust, and on a variety of other occasions. By an act of the 5 & 6 Wm. IV. c. 62, the lords of the Treasury are empowered to substitute a declaration in lieu of an oath, solemn affirmation, or affidavit, in a variety of

cases, such as relate to the revenues of Customs or Excise, the Post-Office, and other departments of administration mentioned in the second section of this act. This act also substitutes declarations in lieu of oaths, solemn affirmations, and affidavits, in various other cases enumerated in the act; for instance, where a person seeks to obtain a patent under the Great Seal. Justices of the peace and others are (§ 13) prohibited from administering or receiving oaths, affidavits, or solemn affirmations, touching any matter or thing whereof such justice or other person has not cognizance or jurisdiction by some statute in force at the time; with certain exceptions however, specified in the latter part of this section. The object of this section was to put an end to the practice of administering and receiving oaths and affidavits voluntarily made in matters not the subject of any judicial inquiry, nor in anywise pending or at issue before the person by whom such oaths or affidavits were administered or received. But this act does not extend or apply to cases where the oath of allegiance then was or thereafter might be required to be taken by any person who may be appointed to any office; nor does it extend or apply to any oath, solemn affirmation, or affidavit, which then was or thereafter might be made or taken, or required to be made or taken, in any judicial proceeding, in any court of justice, or in any proceeding for or by way of summary conviction before any justice of the peace. (§ 7.) Persons who wilfully and corruptly make or subscribe any declaration, under the provisions of this act, knowing the same to be untrue in any material particular, are declared (§ 21) to be guilty of a misdemeanor. The statute of 1 & 2 Vict. c. 77, provides the same privilege of solemn affirmation for persons who have been Quakers or Moravians, and have ceased to be such, but still entertain conscientious objections to the taking of an oath, as they would have enjoyed if they were still Quakers or Moravians.

As oaths may be either voluntary or may be imposed by a political superior, so they may be imposed either on extra-judicial or on judicial occasions. Oaths which are imposed on occasion of judicial proceedings are the most frequent in this country, and the occasions are the most important to the interests of society. The principle on which an oath is administered on judicial occasions is this: it is supposed that an additional security is thereby acquired for the veracity of him who takes the oath. Bentham, in his 'Rationale of Evidence,' on the contrary, affirms that "whether principle or experience be regarded, the oath will be found, in the hands of justice, an altogether useless instrument; in the hands of injustice, a deplorably serviceable one;" "that it is inefficacious to all good purposes," and "that it is by no means inefficacious to bad ones."

The three great sanctions or securities for veracity in a witness, or, to speak perhaps more correctly, the three great sanctions against mendacity in a witness, are, the punishment legally imposed on a person who is convicted of false swearing, the punishment inflicted by public opinion or the positive morality of society, and the fear of punishment from the Deity, in this world or the next, or in both. The common opinion is, that all the three sanctions operate on a witness, though they operate on different witnesses in very different degrees. A man who does not believe that the Deity will punish false swearing can only be under the influence of the first two sanctions; and if his character is such that it cannot be made worse than it is, he may be under the influence of the first sanction only. Bentham affirms that the third sanction only appears to exercise an influence in any case, because it acts in conjunction with "the two real and efficient sanctions," "the political sanction and the moral or popular sanction;" and that if it is stripped of those accompaniments, its impotence will appear immediately.

Bentham's chief argument is as follows. "that the supposition of the efficiency of an oath is absurd in principle. It ascribes to man a power over his Maker. It supposes the Almighty to stand engaged, no matter how, but absolutely engaged, to inflict on every individual by whom the ceremony, after having been performed, has been profaned,—a

punishment (no matter what) which, but for the ceremony and the profanation, he would not have inflicted. It supposes him thus prepared to inflict, at command, and at all times, a punishment, which, being at all times the same, at no time bears any proportion to the offence." Again: "either the ceremony causes punishment to be inflicted by the Deity, in cases where otherwise it would not have been inflicted; or it does not. In the former case the same sort of authority is exercised by man over the Deity, as that which, in English law, is exercised over the judge by the legislator, or over the sheriff by the judge. In the latter case the ceremony is a mere form without any useful effect whatever."

The absurdity of this argument hardly needs to be exposed. He who administers the oath, by virtue of the power which he has to administer it, and the political superior who imposes the oath, may either believe or not believe that the Deity will punish false swearing, and it is quite immaterial to the question which of the two opinions they entertain. That which gives the oath a value in the eyes of him who administers it, or of that political superior who imposes it, is the opinion of the person who takes the oath; and if the individual who takes the oath believes that the Deity, in case it is profaned, will inflict a punishment which otherwise he would not inflict, the object of him who enforces the oath is accomplished, and an additional sanction against mendacity is secured. It matters not whether the Deity will punish or not, nor whether he who enforces the oath believes that he will punish or not: if he who takes the oath believes that the Deity will punish false swearing, that is sufficient to show that the oath is of itself a sanction.

The fear of legal punishment is admitted by Bentham to be a sanction against mendacity. But the legal punishment may or may not overtake the offender. Legal punishment may follow detection, but the perjury may not be detected, and therefore not punished. Is the oath, or would a declaration without oath be, "a mere form without any useful effect whatever," because the legal punishment may not, and frequently does not overtake the offender? When a Greek or a Roman swore by his gods, in whose existence he believed, and who, being mere imaginations, could not punish him for his perjury, was not his belief in their existence and their power and willingness to punish perjury a sanction against mendacity? All antiquity at least thought so.

There are occasions on which oaths are treated lightly, on which he who imposes the oath, he who takes it, and the community who are witnesses to it, treat the violation of it as a trivial matter. Such occasions as these furnish Bentham with arguments against the efficacy of oaths on all occasions. Suppose we admit, with Bentham, as we do merely for the sake of the argument, that "on some occasions oaths go with the English clergy for nothing;" and this, notwithstanding the fact, which nobody can doubt, "that among the English clergy believers are more abundant than unbelievers." The kind of oaths "which go for nothing" are not mentioned by Bentham, but they may be conjectured. Now, if all oaths went for nothing with the clergy, or with any other body of men, the dispute would be settled. But this is not the fact. If in any way it has become the positive morality of any body of men that a certain kind of oath should go for nothing, each individual of that body, with respect to that kind of oath, has the opinion of his body. He does not believe that such oath, if broken, will bring on him divine punishment, and therefore such oath *is* an idle ceremony. But if there is any oath the violation of which he thinks will bring on him divine punishment, his opinion as to that kind of oath is not at all affected by his opinion as to the other kind of oath. Now, oaths taken on judicial occasions are by the mass of mankind considered to be oaths the violation of which will bring some punishment some time, and therefore they have an influence on the great majority of those who take them. Whether society will in time so far improve as to render it safe to dispense with this cere-

mony in judicial proceedings, cannot be affirmed or denied; but a legislator who knows what man now is, will require better reasons for the abolition of judicial oaths than Bentham has given.

How far the requisition of an oath may be injurious in excluding testimony in certain cases, and how far oaths on solemn and important occasions may be made most efficacious, and in what cases it may be advisable to substitute declarations in lieu of oaths, are not matters of consideration here. It is enough here to show that an oath is a sanction or security to some extent, if the person who takes it fears divine punishment in case he should violate it; and that this, and no other, is the ground on which the oath is imposed.

Indeed it is evident that in English procedure the professed opinion or belief of the person who takes the oath is the only reason for which courts of justice either admit or refuse to receive his evidence; and this is shown by the questions which may be put to a witness when he comes to deliver his evidence in a court of justice.

There is some difficulty in stating accurately how far oaths were required from witnesses in Roman procedure under the republic and the earlier emperors. In addition to what has been stated, the reader may refer to Cicero, *Pro Q. Rosc. Comoed.*, c. 15, &c.; and Noodt, *Op. Omn.*, ii. 479, 'De Testibus.' By a constitution of Constantine, all witnesses were required to give their testimony on oath; and this was again declared by a constitution of Justinian. (*Cod.* 4, tit. 20, s. 9, 16, 19.)

Many persons conscientiously object to the taking of an oath on religious grounds, and particularly with reference to our Saviour's prohibition (*Matth.* v. 33). On the subject of oaths in general the reader may consult Grotius, *De Jure*, B. & P., lib. ii, c. 13; Paley's *Moral Philosophy*; Tyler's *Origin and History of Oaths*; the *Law Magazine*, vol. xii.; and the work of Bentham already referred to.

OFFERINGS. [TITHES.]

OFFICE FOUND. By the common law of England, where the king is entitled, upon the occurrence of certain events, to take possession of real or personal property previously belonging to a subject, the facts upon which the king's title accrues must be first ascertained by an inquisition or inquest of office. This inquiry is executed by some officer of the crown, such as the escheator, coroner, or sheriff, or persons specially commissioned for the purpose, and the facts are ascertained by a jury of an indeterminate number, but consisting usually, though not necessarily, of twelve men. Such inquests were much more frequent before the abolition of military tenures, when inquisitions *post mortem* were instituted upon the death of any of the king's tenants, to inquire of what lands he died possessed, and of any other matters tending to establish the king's rights respecting the property of the deceased. [JURY.] When an inquisition of this kind has been executed and returned, it is said to be *an office found*. Thus where treasure has been discovered under circumstances which do not give it to the owner of the land, an inquest is held, and the king, upon office found, takes it; and where a person of illegitimate birth dies intestate, the king (if he is the immediate lord of the fee), upon office found, is entitled to all his land: in the latter case however the land is generally granted again to some person or persons who can make out the most reasonable claim to it. So also the verdict of a jury upon a coroner's inquest, declaring a person to have died *ut felo de se*, is an office found, upon which the king becomes entitled to take possession of the property of the deceased.

OFFICERS OF THE ARMY AND NAVY. [COMMISSION; AIDE-DE-CAMP; ADJUTANT; ADMIRAL; CAPTAIN; COLONEL; CORNET; ENSIGN; GENERAL, &c.]

OFFICIAL. [ARCHDEACON, p 180.]

OLIGARCHY. [DEMOCRACY; GOVERNMENT.]

OPTION, ARCHBISHOP'S. [BISHOP, p. 379.]

ORDER IN COUNCIL. This expression is chiefly known in connection with the measures taken by the British

government in 1807 and 1809, in retaliation of the Berlin and Milan decrees of Napoleon, by which Great Britain and her colonies were declared in a state of blockade. The measure of retaliation had the effect of treating as enemies, not only France and its dependencies, but all who, either voluntarily or by compulsion, gave obedience to the decrees. A full account of the matter will be found under the head BLOCKADE. There has been much dispute as to the legality of these orders. The law of nations has acknowledged the blockading of lines of coast against the commerce even of neutral or friendly powers, when the object is to punish the state so blockaded, and the belligerent power has a force on the spot sufficient to make the blockade actual and physical. But where a belligerent power goes beyond this, and declares some place at which it has no armed force under a state of blockade, it simply issues an edict against the freedom of commerce, authorizes its cruisers to seize vessels which are not impeding any warlike operations, and covertly declares hostilities against the states affected by the fictitious blockade. The law of nations has never countenanced such a licence, and it came to be a question whether these orders in council, being thus not of an executive but of a legislative character, were legal, the Privy Council not having any legislative authority in this country, except in so far as it may be authorized by act of parliament. In favour of the orders, it was maintained that they were merely part of the execution of the royal prerogative of declaring and conducting war, and that they were methods of legitimate retaliation, by which individuals undoubtedly suffered, as individuals always must where warlike operations are conducted on a large scale. Analogy was taken from the exercise of the crown's prerogative during war, in prohibiting the supplying of the enemy with commodities contraband of war—an interference with the freedom of commerce justified by the necessity of the case. But these arguments did not satisfy the country generally that the measure, if it was a right one, should not have been accomplished by Act of Parliament instead of Order in Council.

It is difficult to draw the line between what may and what may not be accomplished by Order in Council. There have been various occasions on which, in cases of emergency, orders in council have been issued contrary to law, and those who have been concerned in passing, promulgating, or enforcing them have trusted to legislative protection, and taken on themselves the personal responsibility of the proceeding. In the year 1766, when there was a deficient harvest and the prospect of famine, an order in council was issued prohibiting the exportation of corn from the British ports. In the immediately ensuing parliament the act 7 Geo. III. c. 7, was passed for indemnifying all persons who had advised the order or acted under it, and for giving compensation to all who had suffered by its enforcement. The act in reference to the order declared, "which order could not be justified by law, but was so much for the service of the public, and so necessary for the safety and preservation of his majesty's subjects, that it ought to be justified by act of parliament." All orders restricting trade—unless when they are within the justification of the national war policy—and all orders suspending the operation of any act of parliament, would require an act of indemnity. There are some matters affecting trade and the revenue, as to which orders in council are specially authorized by act of parliament. Thus in the Customs' Duties Act, when there is any scale of duties to be paid by the subjects of a state having a treaty of reciprocity with Britain, it is enacted that the treaty of reciprocity, and consequently the right to import at the lower duties, shall be declared by order in council. By the International Copyright Act, 1 & 2 Vict. c. 59, the countries which, by their conceding a term of copyright to works published in Britain are to enjoy a similar privilege here, may be declared by order in council.

ORDERS OF KNIGHTHOOD. [KNIGHTHOOD.]

ORDINARY. This term commonly signifies the bishop of the diocese,

who is in general, and of common right, the ordinary judge in ecclesiastical causes arising within his jurisdiction. (Lindwoode's *Provinciale*, lib. i., tit. 3.) The term is also applied to the commissary or official of the bishop, and to other persons having, by custom or peculiar privilege, judicial power annexed to their offices or dignities. Thus an archdeacon is an ordinary. A bishop therefore is always an ordinary, but every ordinary is not a bishop.

The term is derived from the Canonists, and is in common use in several European countries. Since the Lateran Council, when the apostolic see assumed the power of presenting to benefices, the pope has sometimes been called by canonical writers "ordinarius ordinariorum." In England the probate of wills, the granting of letters of administration, the admission, institution, and induction of parsons, and several other authorities of a judicial nature, are vested in the ordinary. The judex ordinarius of the canon and of the later Roman law is a judge who has judicial cognizance in his own proper right, as such judge, of all causes arising within the territorial limits of his jurisdiction. He is opposed to the judex delegatus, or extraordinarius, whose jurisdiction extends only to such causes as are specifically delegated to him by some superior authority. (Ayliffe's *Parergon*, p. 309; Justin., *Novell.* 20, c. 3, and 112, c. 31.) With reference to this distinction, it became usual to apply the term "ordinary" to bishops, who, when acting in their judicial character in ecclesiastical causes, have strictly an ordinary jurisdiction; and we find it used in this sense by Bracton and the earliest writers upon English law.

OSTRACISM. [BANISHMENT, p. 252.]

OUTLAWRY. This term, which is derived from the Saxon *Utlagh* or *Uthlagh*, signifies an exclusion from the benefits and protection of the law. In English law it is a punishment consequent upon a flight from justice, or a contumacious neglect or refusal to appear and answer for a civil or criminal transgression, in obedience to the process of a court of competent jurisdiction. By the laws of the Anglo-Saxons, continued after the Conquest, an outlaw, who was also called *laughlesman* (lawless man) and *frendlesman* (friendless man), lost his *liberam legem*, and had no protection from the frankpledge in the decennary in which he was sworn. A boy under twelve years of age, not being sworn to his law in the decennary, could not be outlawed; and for the same reason a woman who contumaciously refused to appear could not be outlawed, but was said to be *waived* (derelicta), and incurred the same penal consequences as an outlaw.

For centuries after the Conquest an outlaw was said "Gerere caput lupinum," and might be lawfully killed by any one who met him. Bracton, who wrote about the end of the reign of Henry III., declares that an outlaw "might be killed by all, especially if he defended himself or ran away, so that it was difficult to take him; but that when once taken, his life and death were in the king's hands; and if any man then killed him he must answer for it as in the case of any other homicide." (Bracton, lib. iii. cap. 13.) That this practice and law prevailed in his time is further proved by another passage in Bracton (lib. iii. c. 14). Fleta, who wrote rather later than Bracton, mentions the same law, and justifies it. (Fleta, lib. i. cap. 27.) Lord Coke (Co. Lit., 128 *b*, where he refers to the 'Year Book,' 2 Ass., pl. 3) appears to be wrong in claiming for the judges in the reign of Edward III. the merit of abolishing this barbarous practice. The 'Year Book' as cited, and another report of the same case in Fitzherbert's 'Abridgement,' tit. Corone, 148, contain no such resolution, and the case from which it is obvious that Lord Coke derived the above statement, is clearly an authority to show the continuance of the old practice; indeed so late as the reign of Philip and Mary, Staunforde, in his 'Pleas of the Crown,' mentions the above case, and speaks of the law upon this subject as doubtful. However, though the technical quality of homicide so committed may have been question-

able, there is no doubt that the practice of killing outlaws like wild beasts had ceased long before Staunforde's time.

The consequences of outlawry are the forfeiture of goods and chattels universally. Where it takes place upon a prosecution for *treason or felony*, it amounts to a conviction and attainder of the offence charged, and therefore all the outlaw's real property, as well as his personalty, is forfeited. Where it takes place upon criminal prosecutions for misdemeanors, or upon civil actions, the profits only of the defendant's lands are, during his life, forfeited to the crown. The outlaw, having neither the privilege nor protection of the law, is incapable of maintaining any action real or personal; at the common law he could not be a juror, as he was not "liber et legalis;" and he is expressly excluded from acting as a juror by stat. 6 Geo. IV. c. 50, § 3.

No person can be outlawed without sufficient notice of the process of the court, and without satisfactory proof of his contumacy. It is therefore required, in the first place, that in all civil cases, and in all indictments for misdemeanors, and probably also for felonies not capital, three consecutive writs of capias, each issuing upon the return of the former one, should be directed to the sheriff of the county in which the proceeding is commenced. If upon all these writs the return is non est inventus, a writ of *exigent* or *exigi facias* is sued out, which requires the sheriff to cause the defendant to be called or *exacted* in five successive county courts, or in five successive hustings, if in London; and if he renders himself, to take him. But if he does not appear at the fifth county court or husting, judgment of outlawry is forthwith pronounced against him by the *coroners*, who are the judges for this purpose in the county-court, and by the recorder if the proceedings are in London (Co. Litt., 288 *b*; Dyer, 223 *a*, 317 *a*); and the fact of such judgment having been given is returned by the sheriff upon the exigent. Upon this return a writ of capias utlegatum may be issued into any county to arrest the defendant, and other process follows against his property. As an additional security that a man shall not be outlawed without notice of the process to which he is required to appear, the several statutes provide that a writ of proclamation shall issue at the same time with the exigent into the county where the defendant dwells, commanding the sheriff to make three proclamations of him in notorious places in the county a month before the outlawry shall take place.

The only difference between the proceedings in outlawry upon an indictment of treason or capital felony and those upon civil actions and prosecutions for inferior crimes, is that one capias is in the former case sufficient before the award of the exigent.

An outlawry may be reversed by writ of error, in which the party may avail himself of errors either of law or fact; and the slightest mistake in any part of the proceedings will avoid the outlawry. It was formerly necessary to procure a pardon from the crown, by which the outlaw was restored to his law, and became to all intents and purposes "inlagatus." In modern times it is the usual course for the courts to reverse outlawries upon motion, without obliging the parties to sue out writs of error or procure pardons.

OVERSEER, an officer appointed by justices of counties or boroughs, for parishes under the 43 Eliz. 2, and for townships under the 13 & 14 Car. II. 12. They cannot be less than two nor more than four for one parish or township. Churchwardens are ex-officio overseers of the poor, but an appointment of a churchwarden as overseer to act in both capacities is void. The duties of an overseer and of an assistant-overseer are identical, the latter being a paid officer, appointed under the 59 Geo. III. 12, where, on account of the amount of the population, the extent of the parish, or other difficulties, the services are onerous and troublesome. Assistant overseers to take the duties of five or six townships are also appointed by the Commissioners under the Poor-Law Act. Before the passing of the Poor-Law Amendment Act, it was the business of an overseer as well to appropriate and distribute as to make out

and collect the poor-rates. Where no select vestry existed, he was judge of the necessities of applicants for and receivers of parochial relief, an appeal in case of refusal lying before magistrates in petty sessions. We will now describe the present duties of an overseer in parishes subjected to the operation of the Poor-Law Amendment Act: 1, Relating to the management of the poor and to the board of guardians of the district; 2, With respect to returning lunatic lists (where the township for which he acts is not in union under the Poor-Law Act, but where it is in union the clerk of the Guardians by the 5th and 6th Vic. cap 57, sec. 6, is to make out the lunatic lists), and jury lists; 3, With reference to the registration of voters.

1. The Poor-Law Amendment Act limited the authority of an overseer of the poor, by transferring to a board of guardians such portion of his duties as related to ascertaining fit objects for parochial relief, the amount of relief to be given, and the manner of giving it. With such services he has now little to do. His first business on entering upon his office is to possess himself as soon as he is able of the parish books and documents, including all old orders of bastardy under which money is payable; to collect outstanding arrears, if any; and to settle the balance with the outgoing overseer. He will probably be soon called upon to levy a rate, which must be made by a majority of parish-officers. On refusal by any party to pay the rate being sworn to by the overseer, a summons will be granted against the defaulter by a magistrate. An appeal may be carried by the rate-payer to the district petty sessions, on the ground of inequality, unfairness, or incorrectness, if at least seven days' notice be given to the collector or overseer under the hand of the party appellant; or to the quarter-sessions, on the ground that the property is not rateable. It is then the duty of the overseer to appear before the justices to support the validity of the rate. He must collect all arrears that he is able from the fathers of bastard children under the old law, and keep the weekly payments from them currently paid up. In cases of refusal to pay, or other difficulties, he should apply to the Board of Guardians for advice before taking the proceedings justified by law. He is only to give relief to the poor "in any case of sudden or urgent necessity;" and, as soon as he is able, is to report to the relieving-officer his having given such relief. The relief may not be given in money, but only in articles of absolute necessity. The orders of the Poor-Law Commissioners further set forth, that "If any overseer shall receive an order directing relief to be given to any person (duly certified, under the hand and seal of one of the signing justices, to be of his own knowledge wholly unable to work), without requiring that such person shall reside in any workhouse, he shall forthwith transmit the same to the relieving-officer of his township or place, to be laid before the Board of Guardians at their next meeting." At the end of each quarter the overseer will receive a notice from the auditor of the union or district auditor to attend him, that his accounts may be examined and audited, and the overseer's duties as to this are pointed out n the 33rd section of the 7 & 8 Vic. cap. 101. At these times he should take with him all his parish books, letters, and papers, to any of which reference may possibly be made. He is to manage and collect the rents of parish property; and at the end of the Michaelmas quarter he should make out a "terrier of the lands and tenements, and an inventory of stock, moneys, goods, and effects belonging to such parish or place, or given or applicable in aid of the poor-rates thereof." The accounts of overseers must be submitted to two magistrates for their examination within fourteen days after the 25th of March, in cases where district auditors are not appointed, but where that has been done the power of justices to audit is taken away by 7 & 8 Vic. cap. 101, sec. 37. The proceedings for the election of a guardian or guardians in their district are now conducted by the clerk to the guardians, and he must attend the clerk and render assistance. (See the 15th sec of 7 & 8 Vic. cap. 101.)

By the 7 & 8 Vic. cap. 101, sec. 7, the overseer is not to interfere as to applications in bastardy, except in cases of the death or incapacity of the mother.

2. At their first petty-sessions after the 15th of August, the justices of the district issue their warrants to the overseers to return lists of all insane persons chargeable in their respective parishes. It is the duty of the overseer to make this return, as well as, in the case of any insane person becoming chargeable, to give notice within seven days to some magistrate acting for that division of the county, but this only applies to parishes and townships which are *not in union* under the Poor-Law Act. In July he will receive from the high constable of the division a precept, containing full information of his duty respecting the return of a list of persons liable to serve on juries. This return is to be made before the 1st of September.

3. With regard to registration, his business is as follows. On the 20th of June in each year, he will affix on the church door a notice, directing fresh claimants for votes to make formal claim in writing to the overseer on or before the 20th of July. His next step is to make out for each parish an alphabetical list of the names of all persons already in the register, together with those of all claimants. This list must be completed by the last day of July, and affixed on the church or chapel, and, if there be no church or chapel, in some conspicuous situation, on the two first Sundays in August. He must give copies of this list for a reasonable payment, if required. On or before the 25th of August, objections to votes may be received. An alphabetical list of objections is to be posted, as before, on the two Sundays next preceding the 15th of September. When the revising barrister holds his court, it will be the duty of the overseer to attend. His expenses arising from his duties connected with registration are defrayed from the poor-rate. So far with regard to registration of county voters. Overseers of a parish situated in a borough, by the last day of July, without any claims being made, must make an alphabetical list of persons having a 10*l.* qualification in respect of premises situated in their parish. A similar list of freemen must be made where freemen are entitled to votes. These lists must be fixed as above. Claims from persons omitted and objections are received on or before the 25th of August, and lists of these claims, &c. are to be posted on the two Sundays next preceding the 15th of September. The forms according to which overseers are to frame their notices are to be found in the acts of parliament whence their obligations arise, and are collected in a useful pamphlet, from which this article has been compiled, entitled 'The Duties of Overseers of the Poor, and Assistant Overseers,' by George Dudgeon, formerly Clerk to the Guardians of the Settle Union.

OWNERSHIP. [PROPERTY.]

OYER AND TERMINER. These words in ancient law French denote a commission which establishes a court of criminal judicature, the distinguishing character of which is described by them. The substance of the commission, or *writ*, as it was anciently called, is an authority given by the king to certain persons to *hear and determine* (oyer et terminer) certain specified offences. The commissioners of oyer and terminer are the most comprehensive of the several commissions which constitute the authority of the judges of assize on the circuits. On these occasions they are usually directed to the lord chancellor, several high officers of state, two judges of the courts of Westminster, the king's counsel, the serjeants-at-law, and the associates; but (excepting on the Northern Circuit, where all the commissioners but one are of the *quorum*) the judges, king's counsel, and serjeants are always of the *quorum*, so that the other commissioners cannot act without the presence of one of them. Justices of oyer and terminer at the assizes have, by the terms of their commissions, jurisdiction to inquire into the truth of all treasons, misprisions of treason, felonies, and misdemeanors committed within the several counties and places which constitute their circuits, and also to *hear and determine* the same on certain days and at certain places to be appointed by themselves. Besides these ordinary courts of oyer and terminer at the assizes, special commissions of oyer and terminer are sometimes issued upon urgent occa-

sions, where offences of a dangerous tendency have been committed in particular districts, and where the public peace and security require immediate inquiry and punishment. So also special commissions have been sometimes issued where from particular circumstances the incompetency of the ordinary tribunals would occasion a failure of justice. A remarkable instance of this kind occurred when Mr. Dunning, afterwards Lord Ashburton, was recorder of Bristol and sole criminal judge under the charters of the city. A forgery of Mr. Dunning's name to a bill of exchange having been committed in Bristol, he properly refused to try a case in which he was a party interested, and it was therefore necessary to issue a special commission for the purpose of hearing and determining the single offence. Upon special commissions of oyer and terminer the course of the proceedings is nearly the same as upon ordinary or general commissions.

P

PARCENERS AND COPARCENERS. [DESCENT.]

PALACE COURT. [COURTS.]

PALATINE COUNTIES. Two of the English counties, Chester and Lancaster, are counties palatine. The county of Pembroke, in Wales, was also a county palatine; but its palatine jurisdiction was taken away by 27 Henry VIII., c. 26. The archbishop of York, previously to the reign of Elizabeth, claimed to be a count palatine within his possessions of Hexham and Hexhamshire, in Northumberland, and is so termed in some ancient statutes; but by the stat. 14 Eliz., c. 13, it was declared that this district had no palatine jurisdiction or privileges.

Counts palatine were of feudal origin; and a reference to their history will clearly explain the meaning of the title, and also many of the incidents of these territorial dignities in England. Selden says "the name was received here doubtless out of the use of the empire of France, and in the like notions as it had in that use" (*Titles of Honour*, part 2). In the court of the ancient kings of France, before the time of Charlemagne, there was a high judicial officer, called Comes Palatii, a kind of master of the household, whose functions nearly resembled those of the Præfectus Prætorio in the Roman empire. This officer had supreme judicial authority in all causes that came to the king's immediate audience. (Selden's *Titles of Honour*, part ii., chap 33.) When the seat of empire was transferred to France, this title and office still continued, but the nominal dignity as well as a degree of jurisdiction and power analogous to those of the ancient functionary were also given to a different class of persons. When the king chose to confer a peculiar mark of distinction upon the holder of a certain fief or province, he expressly granted to him the right to exercise the same rank, power, and jurisdiction within his fief or province as the comes palatii exercised in the palace. Hence he also obtained the name of Comes Palatii or Palatinus, and by virtue of this grant he enjoyed within his territory a supreme jurisdiction, by which he was distinguished from the ordinary comes, who had only an inferior and dependent authority within his district or county. This was the origin of the distinction between the Pfalzgraf and the Graf in Germany, and between the count palatine and the ordinary count or earl in England. Selden says that he had not observed the word "palatine" thus used in England until about the reign of Henry II.

The counts palatine in England had jura regalia within their counties, subject only to the king's general superiority as suzerain; or, as Bracton expresses it (lib. iii., cap. 8), "regalem habent potestatem in omnibus, salvo dominio Domino Regi sicut principi." They had each a Chancery and Court of Common Pleas; they appointed their judges and magistrates and law officers; they pardoned treasons, murders, and felonies; all writs and judicial proceedings issued and were carried on in their names; and the king's writs were of no force within the counties palatine. Many of these powers, such as the appointment of judges and magistrates, and the privilege of pardon-

ing, were abolished by 27 Henry VIII., cap. 24, which also provided that all writs and process in counties palatine should from that time bear the king's name. The statute however expressly stipulates that writs shall be always witnessed in the name of the count palatine.

The county of Chester is a county palatine by prescription, being commonly supposed to have been first given with regal jurisdiction by William I. to Hugh d'Avranches. (Selden's *Titles of Honour*, part ii.) It was annexed to the crown, by letters patent, in the reign of Henry III., and since that time it has always given the title of Earl of Chester to the king's eldest son, and is preserved in the crown as a county palatine when there is no Prince of Wales.

The county of Lancaster appears to have been first made a county palatine by Edward III., who in the twenty-fifth year of his reign, in his patent of creation of Henry the first duke, granted him the dignity of a count palatine, and afterwards, in the fiftieth year of his reign, granted the same dignity by letters patent to his son John, Duke of Lancaster. Henry IV. was Duke of Lancaster by inheritance from his father John of Gaunt, at the time of his usurpation, but he avoided the union of the duchy with the crown by procuring an act of parliament, which declared that the duchy of Lancaster should remain with him and his heirs for ever, in the same manner as if he had never been king of England. Upon the attainder of his grandson Henry VI., soon after the accession of Edward IV., the duchy became forfeited to the crown, and an act of parliament passed to incorporate the county palatine with the duchy of Lancaster, and to vest the whole in Edward IV. and his heirs, for ever. Another act of parliament passed in the reign of Henry VII., confirming the duchy to the king and his heirs for ever; and from that time it has continually been united to the crown.

Durham is a county palatine by prescription; but it is probable that the palatine jurisdiction did not exist long, if at all, before the Norman Conquest. (Surtees's *History of Durham*, Introd., p. 15.) "There is colour to think," says Selden (*Titles of Honour*, part ii., c. 8), "that the palatine jurisdiction began then in Bishop Walcher, whom King William I. made both episcopus and dux provinciæ, that he might frænare rebellionem gentis gladio, et reformare mores eloquio, as William of Malmesbury says." Durham continued as a county palatine in the hands of a subject till the year 1836, the bishop having been prince palatine, and possessing jura regalia till that time. By the stat 6 & 7 Will. IV., c. 19, the palatine jurisdiction was separated from the bishopric and transferred to William IV., and vested in him and his successors as a franchise separate from the crown, together with all forfeitures, mines, and jura regalia. The jurisdiction of the courts was expressly excepted from the operation of the act.

PANDECT. [JUSTINIAN'S LEGISLATION.]

PANEL. This term denotes a small schedule of paper or parchment containing the names of jurors returned by the sheriff or other ministerial officer for the trial of issues in courts of common law. The enrolment of the names upon this schedule is called *impanelling* a jury; the ministerial officer is also said to *array* the names in the panel. The etymology of the term is doubtful: Sir Edward Coke says, "Panel is an English word, and signifieth a little part, for a *pane* is a part, and a panel is a little part.' (Co. Litt., 158 b.) Spelman derives the word from *pagella*, a little page, supposing the *g* to be changed to *n*. (Spelman's *Gloss.*, tit. 'Panella'). Both these etymologies seem to be incorrect. In the old book called 'Les Termes de la Ley,' *panel* is said to come from the French word *panne*, a skin; whence in barbarous Latin might come *panellus* or *panella*, signifying a little skin of parchment. This would denote the jury panel pretty accurately, and the history of its appearance as an expression in English procedure is consistent with its derivation from the French.

In the earliest records of the forms of jury-process, as given by Glanville, it appears that the sheriff was commanded by the writs in certain real actions to cause to be imbreviated (imbreviari-facere) the

names of the jurors by whom the land in question was viewed. But at this time the word *panel* never occurs, nor is it used by Bracton, Fleta, or Britton, nor in any statute earlier than 20 Edw. III. c. 6. (1349), which forbids sheriffs from putting suspected persons in *arrays of panels*. This was precisely the period at which the French language began to be fully introduced into our law proceedings. (Luder's 'Tract on the Use of the French Language in our Ancient Laws.') This coincidence renders it not improbable that the word *panel*, from *panelle* and *panne*, may have been introduced with many other French terms about this period.

In Scotch criminal law, the accused, who is called a defender till his appearance to answer a charge, is afterwards styled the *pannel*. The etymology of this word also is doubtful. (Jameson's *Dictionary*.) But it is possible that it may have the same origin as our English word, as in Scotch proceedings a prisoner is sometimes said to be *entered in pannel* to stand trial. (Arnot's *Criminal Trials*, p. 12.)

PAPIST. [LAW, CRIMINAL, p. 217, &c.; PARENT; ROMAN CATHOLICS.]

PAR OF EXCHANGE. [EXCHANGE, BILL OF, p. 867.]

PARDON. According to the laws of most countries, a power of pardoning, or remitting the penal consequences of a conviction for crimes, is vested in some person. The utility of such a power has been doubted, upon the ground that it supposes an imperfect system of criminal law, and that every instance of its exercise is the proclamation of an error either in the law itself or in the administration of justice. (Beccaria, chap. 46.) There is no doubt that the nearer a penal system approaches to perfection, the fewer will be the occasions for resorting to extraordinary remissions of the executions of the law; but considering the numerous causes of erroneous decision, arising not only from the imperfection of laws themselves, but from the infinite sources of error in the instruments and means by which they are administered, it seems to be desirable that some power should exist which may by timely interference correct error in cases where it cannot be corrected by any appellate tribunal. At the same time it is evident that such a power should be circumscribed and defined, as far as its nature will admit, and exercised with the utmost caution. By the law of England, besides pardons by act of parliament, the power of granting pardons for crimes is exclusively vested in the king as a branch of his prerogative.

Formerly, Counts Palatine, Lords Marchers, and others who claimed *jura regalia* by virtue of ancient grants from the crown, assumed the authority to pardon crimes; but by the stat. 27 Henry VIII., c. 24, this power was entirely abolished, and the sole right of remitting the sentence of the laws was permanently vested in the king. The power of pardoning is applicable in all cases in which the crown is either concerned in interest or prosecutes for the public. The only exception to this rule is contained in the Habeas Corpus Act (31 Car. II., c. 2, s. 12), by which persons convicted of signing commitments of British subjects to foreign prisons are declared to incur the penalties of a *præmunire* and to be "incapable of any pardon from the crown."

The crown has however no power to pardon any offence in the prosecution of which a subject has a legal interest, a doctrine laid down by Bracton (lib. iii, p. 132). Thus in appeals of death, robbery, or rape, the king could not pardon the defendant, "because," says Sir Edward Coke, "it is the suit of the party to have revenge by death" (3 *Inst.*, 237). Upon the same principle, where an attaint was brought against a jury who had delivered a false verdict, and the party in whose favour it had been given was joined in the attaint, the king might pardon the *jury*, if convicted, because they were merely subject to an exemplary punishment; but he could not pardon the *party*, because he was liable to make restitution to the plaintiff who prosecuted the attaint. So also in indictments for common nuisances, where the public are interested as individuals or particular classes, or informations upon penal statutes, where the penalty or any part of it goes to the informer or the party grieved,

the crown cannot pardon the offender. Formerly, the crown appears to have exercised without restriction the power of pardoning offenders impeached by the Commons in parliament (Blackstone's *Com.*, vol. iv., p. 400—Christian's *Note*); but the lawfulness of the exercise of this power during the proceedings was questioned by the House of Commons on the impeachment of the Earl of Danby in the reign of Charles II. (Howell's *State Trials*, vol. ii., p. 724); and by the Act of Settlement, 12 & 13 William III., c. 2, it was enacted "that no pardon under the great seal of England shall be *pleadable* to an impeachment by the Commons in Parliament." This statute however does not affect the power of the crown to pardon the offender after he has been found guilty upon the impeachment, and the proceedings are determined.

An effectual pardon from the crown must apply in express terms to the particular offences intended to be pardoned; and there must be no reasonable intendment, supplied by the recital in the pardon or otherwise, that the crown was deceived or misled as to any of the circumstances on which the grant was founded. Nor can any grant of a commission or protection by the king amount by implication to a pardon of any offence previously committed.

A pardon may be either absolute or subject to any condition which the crown may think proper to annex to it; and in the latter case, the validity of the pardon will depend upon the performance of the condition. Until the recent improvements in the criminal law of England, almost all felonies were nominally capital; and in the numerous cases where it was not intended that the sentence of death should be executed, the criminal obtained a pardon upon condition of his submitting to transportation or some other punishment. At the present day, where the crown interferes to mitigate or commute a sentence, the mode by which it is effected is by granting a conditional pardon.

It was formerly necessary that every valid pardon from the crown should be under the great seal; but by the stat. 7 & 8 Geo. IV., c. 28, s. 13, it is declared and enacted "that where the king's majesty shall be pleased to extend his royal mercy to any offender convicted of any felony, punishable with death or otherwise, and by warrant under his royal sign manual, countersigned by one of his principal secretaries of state, shall grant to such offender either a free or conditional pardon, the discharge of such offender in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal."

The effect of a pardon is not merely to prevent the infliction of the punishment denounced by the sentence upon the offender, but to give him a new capacity, credit, and character. A man attainted of felony can neither bring an action for damages nor be a witness or a juror in any legal proceeding; but upon receiving a pardon, all these legal disabilities are removed. In this respect a pardon by the law of England differs from the abolitio of the Roman law, to which in other points it bears a near resemblance. According to the latter, "Indulgentia, quos liberat, notat; nec infamiam criminis tollit, sed pœnæ gratiam facit." (*Cod.*, lib. ix., tit. 43.) By the English law a distinction is made as to the effect of a pardon where the incapacity is part of the legal sentence, and not merely a consequence of attainder, as in the case of perjury under the statute 5 Elizabeth, c. 9; where the incapacity or infamy is part of a statutory sentence, a pardon from the crown has been held not to restore the party, and in such a case nothing less than an act of parliament will have that effect. (Chitty's *Criminal Law*, vol. i. p. 776.) Some doubt has been expressed, and the point has not yet received a judicial determination, whether a royal pardon will fully restore a person convicted of a crime, such as perjury, which is considered infamous at the common law. This subject is elaborately discussed, and all the authorities carefully examined, in Mr. Hargrave's 'Argument on the Effect of the King's Pardon of Perjury.' (Hargrave's *Juridical Arguments*, vol. ii., p. 221; LAW, CRIMINAL, p. 223, 228.)

PARENT AND CHILD. This relation arises only from a legal marriage. The relation between parents and their illegitimate children is considered in the article BASTARD.

Parents are bound to maintain their legitimate children who are unable to maintain themselves owing to infancy or inability to work. This obligation extends to father and mother, grandfather and grandmother, if they are able to perform it. (43 Eliz. c. 2.) But such persons are only bound to furnish the children with the necessaries of life; and the penalty incurred in case of refusal is only 20*s*. per month. A husband is now (4 & 5 Wm. IV. c. 76) liable to maintain the children of his wife, born before marriage, whether they are legitimate or not, until they are of the age of sixteen, or until the death of his wife. If a parent deserts his children, the churchwardens and overseers may seize his goods and chattels, and receive his rents, to the amount mentioned in the justices' warrant, which must be obtained before such seizure is made.

Until recently, various acts existed which bore with exclusive severity on Popish and Jewish parents in respect of the education and maintenance of their children. These interferences with parental authority were in use throughout the United Kingdom, and their stringency increased, so recently as by 1 Anne, st. 1, c. 30, which empowered the lord chancellor to compel Jewish parents who refused to maintain their Protestant children in a style suitable to the fortune of the parents, and the age and education of the children. But the Criminal Law Commissioners recommended the repeal of those acts touching the compulsory maintenance of children, observing, that such laws appeared to be "objectionable as interfering with the rights of property, as liable to abuse on the part of young persons, and as calculated to create dissension in families." Conformably with these recommendations, the statutes have been repealed by the 9 and 10 Victoria, c. 59, passed in 1846. The law does not make any provision in the case of a child who has become a convert from Protestantism or has renounced Christianity.

Parents are not bound to make any provision for their children after their death. Every man, and every woman who is capable of disposing of her property by will, may dispose of it as they please; a freeman of London is under some limitations as to the power of disposing of his personality by will, which limitations are in favour of his wife and children. [WIFE.] A parent and child may aid each other in a law-suit by paying fees, without being guilty of maintenance, if they have no expectation of repayment.

Parents are not legally bound to give any education to their children, nor are they under any restrictions as to the kind of education which they may give. Certain penalties were imposed by statute (1 Jac. I. c. 4; 3 Jac. I. c. 5) on a person who sent a child under his government beyond seas, either to prevent his good education in England or for the purpose of placing him in a Popish college or being instructed in the Popish religion; and further penalties and disabilities were imposed both on the person sending and the person sent, by the 3 Car. I. c. 2. These penal and disabling statutes are made of non-effect by the 31 Geo. III. c. 32, in favour of any Roman Catholic who took the oath therein prescribed; and probably these statutes may be considered as repealed.

The power of a parent over his children continues until the age of twenty-one, at which age they become emancipated; and if a parent die, leaving a child under age, he may appoint a guardian to such child till the age of twenty-one, by a will executed pursuant to 1 Vict. c. 26. A mother has no power over her children. A person under age, except a widower or widow, cannot marry without the father's consent, or such consent as is required by the Marriage Act. [MARRIAGE, p. 332.]

A child under age may acquire property by gift; and if a father is the trustee of his child's estate, he must account to the child when he comes of age, like any other trustee. So long as a child who is under age lives with and is supported by the father, the father is entitled to re-

ceive the reward of the child's labour. When a child has a fortune of his own, and the father is not able to maintain him suitably to such fortune, a court of equity will allow the father a competent sum for maintenance out of the child's estate; but a father is not entitled to any such allowance in respect of costs incurred by him for his child's maintenance before he obtains such order of court for maintenance.

A parent may maintain an action for the seduction of a daughter on the ground of loss of her services, if there is evidence of her acting in the capacity of servant, or living with the parent in such a manner that the parent had a right to her services. This action has been maintained by a father in the case of his daughter, a married woman above age, living separate from her husband, and with the father; and by an aunt for the seduction of a niece living with her, to whom she stood in the relation of parent. The foundation of the right to maintain such an action is the loss of the services to which the parent is entitled. In allowing such an action therefore in the case of a child above age or a married woman, the courts have departed from the legal principle which is the foundation of the right of action.

A father is legally entitled to the care and custody of his children, but he may be deprived of the care of them by the Court of Chancery, if his conduct is such as, in the opinion of the court, endangers the morals of the children. Percy Bysshe Shelley was, among other things, restrained by an order of the Court of Chancery from taking possession of the persons of his infant children, on the ground of his professing irreligious and immoral principles, and acting on them. W. P. T. L. Wellesley was also restrained by a like order from removing his children from the care and custody of their aunts, on the ground of his immoral conduct, and directions were given by the court for the custody and education of the children. But, except in such cases as these, the children cannot be taken from the care of the father and given into the custody of the mother or any other person

Under a recent act (2 & 3 Vict. c. 54) a mother who is living apart from her husband may obtain by petition an order from a court of equity for access to her child which is in the sole custody of the father, or of any person by his authority, or of any guardian after the death of the father, subject to such regulations as the judge may think convenient and just; and if such child shall be within the age of seven years, the judge may order the child to be delivered into the custody of the mother until the child attains the age of seven years, subject to such regulations as aforesaid. But no mother is to have the benefit of the act against whom adultery has been established by judgment in an action at law, or by the sentence of an ecclesiastical court.

The relations between parent and child which are not founded upon the parental power, but arise in respect of gifts by the parent to the child on marriage or any other occasion, and in respect of purchases by the parent in the name of the child, belong to various heads or titles of the law of property, inasmuch as the rights and claims of other persons besides parent and child are involved in such cases.

A child who is under the parental power owes obedience to his parent, which the parent may enforce by his superior strength, provided he uses it with moderation. He may beat his child and restrain his liberty, but not in such a way as to injure his health. A child is legally bound to maintain his indigent father and grandfather, mother and grandmother, if he is able; the penalty in case of refusal is 20*s.* per month.

The Parental Power (patria potestas) among the Romans was a peculiar feature in their institutions. It was founded on a legal marriage, or on a legal adoption; the children of such marriage and such adopted children were in the power of the father; the mother had no power over the children. It followed from the principle of the patria potestas, which involved a right of property, that the children of a son, who was not emancipated, were also in the power of their grandfather. By the death of the grandfather the son became *sui juris*, and his children and

grandchildren, if any, fell into his power. The patria potestas was also dissolved by Emancipation. Originally the father's power was absolute over the child, who had no independent political existence, at least as a member of his father's family. He was a Roman citizen, but at home he was subject to the domestic tribunal. The notion of a Roman Family (familia) is that of a Unity, which unity among all the members of the family is a consequence of the paternal power. Within the family the father had originally a power of life and death, and could sell the son as a res mancipi, by way of punishment. The father also originally possessed the jus noxae dandi with respect to his son as well as a slave, a power which was a consequence of the principle of the father being answerable for the delicts of his son, and continued so long as that principle was in full vigour. The son who was in the power of his father could acquire no property for himself; all his acquisitions, like those of a slave, belonged to his father; but at the death of the father they might become his own property, a circumstance which distinguished the acquisitions of a son from those of a slave. Also, such a son could not make a testament, nor could there be any *in jure cessio* made to him. The father could marry his children, divorce them, give them in adoption, and emancipate them at pleasure. The effect of emancipation was that the son ceased to belong to his father's family; and this principle had many important legal consequences.

The strict notion of the patria potestas lies at the foundation of the Roman polity. Like other institutions however, which in the early history of a state form its essential elements, the strict character of the patria potestas became gradually relaxed and greatly changed. The history of such changes is a part of the history of Rome.

The patria potestas might be dissolved in other ways besides those mentioned. If a father or son lost his citizenship, the relation between them ceased, for this relationship could only exist between Roman citizens. If father or son was made a prisoner by an enemy, the relation was in abeyance (in suspenso), but was not extinct. If the son attained certain high offices in the state, either civil or religious, the patria potestas was thereupon dissolved.

Gaius, i. 55, 97, 127, &c.; Marezoll, *Lehrbuch der Instit. des Röm. Rechtes*, 1839; Savigny, *System des heutigen Röm. Rechts*, 1840; Böcking, *Institutionen*, i. 224, &c.)

PARISH. This word is probably derived into the English language from the French *paroisse*, and the Latin *parochia* or *paroecia*, and ultimately from the Greek *paroikia* (παροικία). At the present day it denotes a circumscribed territory, varying in extent and population, but annexed to a single church, whose incumbent or minister is entitled by law to the tithes and spiritual offerings within the territory. In the early ages of Christianity the term appears to have been used in some parts of Europe to signify the district or diocese of a bishop, as distinguished from the "provincia" of the archbishop or metropolitan. (Du Cange, *Gloss.*, ad verb. 'Parochia;' Selden's *History of Tithes*, chap. vi. sect. 3.) These large ecclesiastical provinces were gradually broken down into subdivisions, for which ministers were appointed, either permanently or occasionally, who were under the rule of the bishop, were paid out of the common treasury of the bishopric, and had no particular interest in the oblations or profits of the church to which their ministry applied. This was the state of things in the primitive times, which probably continued till towards the end of the third century. After that period proprietors of lands began, with the licence of the higher ecclesiastical authorities, to build and endow churches in their own possessions; and in such cases the chaplain or priest was not paid by the bishop, but was permitted to receive for his maintenance, and to the particular use of his own church, the profits or the proportion of the profits of the lands with which the founder had endowed it, as well as the offerings of such as repaired thither for divine service. This appears to be a probable account of the origin and gradual formation of parochial

divisions in almost all countries where Christianity prevailed; and Selden has satisfactorily shown that the history of parishes in England has followed the same course. Soon after the first introduction of Christianity into this country, the heathen temples and other buildings were converted into churches or places of assembly, to which the inhabitants of the surrounding district came to receive religious instruction from the minister, and to exercise the rites of Christian worship. As the members of the new religion increased, a single or occasional minister was insufficient for the purpose; and a bishop, with subordinate priests, began to reside in the immediate neighbourhood of the religious houses, having the charge of districts of various extent, comprehending several towns and villages, and assigned principally with a view to the convenience of the inhabitants in assembling together at the church. Within these districts, or *circuits*, as they were called, which were precisely analogous to the diocesan *parishes* in other parts of Europe, the ministering priests itinerated for the purpose of exercising their *shriving*, but they always resided with the bishop. By degrees other churches were built to meet the demands for public worship, but still at first wholly depending upon the mother-church, and supplied by the bishop from his family of clergy resident at the bishopric with ministers or curates, who were supported by the common stock of the diocese. For the fund or endowment in each of these districts was common; and whatsoever was received from tithes or the offerings of devotees at the different altars, or by any other means given for religious uses, was made into a general treasure or stock for the ecclesiastical purposes of the whole diocese; and was applied by the bishop in the first place to the maintenance of himself and the college of priests resident with him at the church, and afterwards for distribution in alms among the poor, and for the reparation of churches.

This community of residence and interest between the bishop and his attending clergy, who are often termed in the chronicles of those days *episcopi clerus*, constituted the notion of cathedral churches and monasteries in their simplest form. How long this state of things continued does not precisely appear, though Selden expresses an opinion that it was in existence as late as the eighth century. (*History of Tithes*, chap. ix. sect. 2.) It has indeed been asserted by Camden (*Britannia*, p. 160), and was formerly the commonly received opinion, that Honorius, the first archbishop of Canterbury, after Augustin, divided his provinces into parishes about the year 630; but Selden proves satisfactorily that Honorius could not have made a parochial division in the sense in which we now understand the term; and that, if made at all, it must have been such a distribution into districts, then called parishes, as is above described, and which was so far from originating with Honorius, that it must have been nearly as ancient as bishoprics.

It seems probable that the creation of parishes in England was the gradual result of circumstances, and was not fully effected till near the time of the Conquest. As Christianity became the universal religion, and as population increased, the means of divine worship supplied by the bishoprics and monasteries became inadequate, and lords of manors began to build upon their own demesnes churches and oratories for the religious purposes of their families and tenants. Each founder assigned a definite district, within which the functions of the minister officiating at his church were to be exercised, and expressly limited the burthen as well as the advantages of his ministry to the inhabitants of that district. As these acts of piety tended to the advance of religion, and were in aid of the common treasury of the diocese, they were encouraged by the bishops, who readily consecrated the places of worship so established, and consented that the minister or incumbent should be resident at his church, and receive for his maintenance, and for the use of that particular church, the tithes and offerings of the inhabitants, as well as any endowment or salary which the founder annexed to it. This endowment or salary usually consisted of a glebe, or

a portion of land appropriated to that purpose, the produce of which, and of the ecclesiastical profits which arose within the territory limited by the founder, became the settled revenue of the church, and annexed to it in perpetuity. The last concession made to the lay-founder was probably the patronage or right of presenting the clerk to the church, which, by the primitive constitution, belonged exclusively to the bishop; and when this was obtained, these limited territories differed in no material respect from our modern parishes. Indeed it can scarcely admit of doubt that our parochial divisions arose chiefly from these lay-foundations, the differences in extent being accounted for by the varying limits appointed for them at their origin. Their names were derived from some favourite saint, from the site, or the lordship to which they belonged, or from the mere fancy of the respective founders. Such appears to have been the origin of the lay parishes; and it is reasonable to conclude that as soon as this practice was established, the bishops and religious houses, in the districts or parishes in which they had reserved to themselves the right of presentation, followed the same course, by limiting the ecclesiastical profits of each church to the particular incumbent, and restricting the devotions as well as the offerings of the inhabitants to that church only.

The earliest notice of these lay foundations of parishes is by Bede, about the year 700 (*Hist. Eccl.*, lib. v. c. 4 and 5). By the end of the eighth century they had become frequent, as clearly appears from the charters of confirmation made to Croyland Abbey, by Bertulph, king of Mercia, in which several churches of lay-foundation are comprehended. In the laws of king Edgar (A.D. 970) there is an express provision that every man shall pay his tithes to the most antient church or monastery where he hears God's service; "which I understand not otherwise," says Selden, "than any church or monastery whither usually, in respect of his commorancy or his parish, he repaired; that is, his parish church or monastery." (*History of Tithes*, chap. ix. 1, 4.)

Although the origin of parishes generally in England is pretty clearly ascertained, the history of the formation of particular parishes is almost wholly unknown, and no evidence whatever can be produced on the subject.

However satisfactory this account of the origin of parishes may be with reference to country parishes, it furnishes no explanation of the origin of parishes in towns—a subject which is involved in great obscurity; and indeed the changes which the latter may be shown to have undergone within time of memory seem to point to a different principle of formation.

The country parishes appear to be nearly the same in name and number at the present time as they were at the time of Pope Nicholas's 'Taxation,' compiled in the reign of Edward I. (A.D. 1288); but in some of the large towns the number of parishes has very considerably decreased. Thus, in the city of London there are at present 108 parishes, though at the time of the 'Taxation' the number was 140; in like manner in Norwich the number has been reduced from 70 in the time of Edward I., to 37 at the present day. In other antient towns, such as Bristol, York, and Exeter, the number does not appear to have materially changed, but the names have been often altered. The particular causes of these variations it would be difficult to trace; but greater changes might reasonably be expected in towns than in the country parishes, in consequence of more frequent fluctuations of wealth and population in the former. Where a decrease has taken place in the number of town parishes in the three last centuries, it is probably to be accounted for by the great reduction since the Reformation in the amount of oblations and what are called *personal* tithes, which in cities were almost the only provision for the parochial clergy.

The size of English parishes varies much in different districts. In the northern counties they are extremely large, forty square miles being no unusual area for a parish; and, generally speaking, parishes in the north are said to average seven or eight times the area of the southern counties. (See Rickman's *Preface to Popula-*

Returns of 1831.) The boundaries parishes in former times appear to have n often ill-defined and uncertain: but e the establishment of a compulsory vision for the poor by means of assess- nts of the inhabitants of parishes, the its have in general been ascertained h sufficient precision.

t is not easy to ascertain the exact nber of parishes in England and Wales; although they have been enumerated several occasions, the number ascer- ed has usually depended upon the ct and purpose of the particular enu- ation. Thus in the returns under the r Law Commission, a parish is gene- y considered as a place or district porting its own poor, and from these rns it appears that the total number such places is 14,490. But in this nber are included many subdivisions parishes, such as the townships in the thern counties, which by stat. 13 & 14 . II., c. 12, f. 21, are permitted to ntain their own poor, and also other es which by act of parliament, though parishes, have the same privilege. An- r difficulty, which has probably cted all the enumerations which have erto been made, is the large number oubtful parishes. It is somewhat un- ain at the present day what circum- ces constitute a parish church. In the on times, and for some centuries after Conquest, the characteristics which nguished a parish church from what e called field-churches, oratories, and pels, were the rites of baptism and ilture. (Selden, *History of Tithes*, ch. ; Digge's *Parsons' Counsellor*, part i., . xii.) But in modern times this line distinction would include as parish rches almost all chapels-of-ease, and the churches and parochial chapels ted under the stat. 58 Geo. III., c. 45, r building additional churches in ulous places." The various views rtained of the constituents of a parish in a great measure account for the rent results of the several enumera- s which have been made; and this fact one of the reasons assigned by nden for the difference between the nber of the parish churches in Eng- l and Wales stated to Henry VIII. in 1520, by Cardinal Wolsey, and that stated about a century after to James I., the former being 9407, and the latter 9284. (Camden's *Britannia*, 161-2.) The sum total of the parishes mentioned in Pope Nicholas's 'Taxation' above referred to, as nearly as can be ascertained, appears to be between these two accounts. Blackstone says that the number of parishes in England and Wales had been computed at 10,000, but gives rather a questionable authority for his statement. (*Commentaries*, vol. i., p. 111.) In the Preface to the 'Population Returns' of 1831, above referred to, the number of parishes and parochial chapelries in England and Wales is said to be 10,700, and in Scotland 948; but in the next page, where a summary of the number of parishes in the different dioceses is given, the total is stated as 11,077. Perhaps the number of parishes in England and Wales (meaning by the term simply a district annexed to a church whose incumbent is by law entitled to the perception of tithes in that district) may be taken to be about 11,000.

(See Holland's 'Observations on the Origin of Parishes,' in Hearne's *Discourses*, vol. i., p. 194; and Whitaker's *History of Whalley*, book ii., chap. 1.)

PARISH CLERK, a person whose duty it is to assist the parson in the rites and ceremonies of the church. He is generally appointed by the incumbent, and, as Blackstone states, according to the common law he has a freehold in his office, of which he cannot be deprived by ecclesiastical censures; but a recent statute has made an alteration in this respect. Parish clerks cannot enforce payment by legal process of the customary fees due to them. In churches or chapels erected under the Church Building Acts the clerk is appointed annually by the minister. In some places the parish clerk is chosen by the inhabitants. In small parishes the offices of parish clerk and sexton are united in one person. In 1844 an act was passed (7 & 8 Vict. c. 54) 'for better regulating the offices of lecturers and parish clerks.' Under this act a person in holy orders may be appointed or elected to the office of church clerk, chapel clerk, or parish clerk. He is to be licensed by the bishop, in the same manner as sti-

pendiary curates, and when appointed otherwise than by the incumbent is to be subject to his consent and approval. It is further provided that all the profits and emoluments of the office of clerk are to be enjoyed so long as the person in holy orders who holds it performs all such spiritual and ecclesiastical duties as the incumbent, with the sanction of the bishop, may require. The act expressly states that such person shall not have or acquire any freehold or absolute right to or interest in the said office of church clerk, chapel clerk, or parish clerk, but shall at all times be liable to be suspended or removed from such office by the same authority and on the like grounds as stipendiary curates may be removed. The act also enables any archdeacon or other ordinary to remove clerks not in holy orders who may be guilty of neglect or misbehaviour.

PARK. This term, in its legal signification as a privileged enclosure for beasts of the forest and chace, is at the present day nearly obsolete. Under the ancient forest-laws, the franchise of the highest degree was that of a forest, which was the most comprehensive name, and contained within it the franchises of chace, park, and warren. The only distinction between a chace and a park was, that the latter was enclosed, whereas a chace was always open, and they both differed from a forest, inasmuch as they had no peculiar courts or judicial officers, nor any particular laws, being subject to the general laws of the forest; or, as Sir Edward Coke maintains, to the common law exclusively of the forest-laws (4 *Inst.*, 314). A chace and a park differed from a forest also in the nature of the wild animals to the protection of which each was applied. The beasts of the forest, or beasts of venery, as they were called, were *tantum silvestres*, that is, as Manwood explains the phrase (*Forest Laws*, chap. iv., sec. 4), animals such as the hart, hind, hare, boar, and wolf, which "do keep the coverts, and haunt the woods more than the plains." On the other hand, the beasts of chace or park, were *tantum campestres*, that is to say, they haunted the plains more than the woods. According to the *strict legal* meaning of the term, no subject can set up a park without the king's grant, or immemorial prescription, which is presumptive evidence of such a grant. In modern times the term is little known, except in its popular acceptation as an ornamental enclosure for the real or ostensible purpose of keeping fallow deer, interspersed with wood and pasture for their protection and support. (Blackstone's *Commentaries*, vol. ii., p. 38.)

PARKS, PUBLIC. [PUBLIC HEALTH.]

PARLIAMENT, IMPERIAL, the legislature of the United Kingdom of Great Britain and Ireland, consisting of the king or queen [KING], the lords spiritual and temporal [LORDS, HOUSE OF], and the knights, citizens, and burgesses [COMMONS, HOUSE OF] in parliament assembled.

The word is generally considered to be derived from the French, 'parler,' to speak. "It was first applied," says Blackstone, "to general assemblies of the states under Louis VII. in France, about the middle of the twelfth century." The earliest mention of it in the statutes is in the preamble to the statute of Westminster, A.D. 1272.

Origin and Antiquity of Parliament.

The origin of any ancient institution must be difficult to trace, when in the course of time it has undergone great changes; and few subjects have afforded to antiquaries more cause for learned research and ingenious conjecture than the growth of our parliament into the form which it had assumed when authentic records of its existence and constitution are to be found. Great councils of the nation existed in England both under the Saxons and Normans, and appear to have been common amongst all the nations of the north of Europe. They were called by the Saxons *michel-synoth*, or great council; *michel-gemote*, or great meeting; and *witten-a-gemote*, meeting of wise men —by the last of which they are now most familiarly known. The constitution of these councils cannot be known with any certainty, and there has been much controversy on the subject, and especially as to the share of authority enjoyed by the people. Different periods have been assigned for their admittance into the legis-

lature. Coke, Spelman, Camden, and Prynne agree that the commons formed part of the great synods or councils before the Conquest; but how they were summoned, and what degree of power they possessed, is a matter of doubt and obscurity. "The main constitution of parliament, as it now stands," says Blackstone, "was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the great charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons [BARONS] personally, and all other tenants in chief under the crown by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary; and this constitution has subsisted, in fact at least, from the year 1266, 49 Hen. III., there being still extant writs of that date to summon knights, citizens, and burgesses to parliament." A statute, also, passed 15 Edw. II. (1322), declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in parliament, by the king and by the assent of the prelates, earls, and barons, and the commonalty of the realm, *according as had been before accustomed.*" In reference to this statute Mr. Hallam observes "that it not only establishes, by a legislative declaration, the present constitution of parliament, but recognises it as already standing upon a custom of some length of time." (1 *Const. Hist.*, 5.)

Constituent Parts of Parliament.

Of the king (or queen), the first in rank, nothing need be repeated in this place.

The House of Lords is at present composed of—

Lords Spiritual.

2 archbishops (York and Canterbury)
24 English Bishops
4 Irish representative bishops

Total, 30

Lords Temporal.

2 dukes of the blood royal
20 dukes
20 marquesses
115 earls
21 viscounts
200 barons
16 representative peers of Scotland
28 representative peers of Ireland

Total, 422

The number has been greatly augmented from time to time, and there is no limitation of the power of the crown to add to it by further creations. The introduction of the representative peers of Scotland and Ireland was effected on the union of those kingdoms, respectively, with England. The former are elected by the hereditary peers of Scotland descended from Scottish peers at the time of the Union, and sit for one parliament only; the latter are chosen for life by the peers of Ireland, whether hereditary or created since the Union. The power of the crown to create Irish peers is limited by the Act of Union, so that one only can be created whenever three of the peerages of Ireland have become extinct.

The present composition of the House of Commons is as follows:—

England and Wales.

159 knights of shires
341 citizens and burgesses

Total, 500

Scotland.

30 knights of shires
23 citizens and burgesses

Total, 53

Ireland.

64 knights of shires
41 citizens and burgesses

Total, 105

Total of the United Kingdom, 658. But this includes the borough of Sudbury disfranchised for gross corruption by 7 & 8 Vict. c. 53; and the two members which this borough formerly returned have not yet been transferred to any other place. A full view of the present system of representation is given in the article COMMONS, HOUSE OF.

The lords and commons originally were one assembly, but the date of their separation is not known. The following notice of this subject is taken from Mr. T. Erskine May's 'Law, Privileges, Proceedings, and Usage of Parliament,' p. 19. "When the lesser barons began to secede from personal attendance, as a body, and to send representatives, they continued to sit with the greater barons as before; but when they were joined by the citizens and burgesses, who, by reason of their order, had no claim to sit with the barons, it is natural that the two classes of representatives should have consulted together, although they continued to sit in the same chamber as the lords. The ancient treatise, 'De Modo tenendi Parliamentum,' if of unquestioned authority, would be conclusive of the fact that the three estates ordinarily sat together; but when any difficult or doubtful case of peace or war arose, each estate sat separately, by direction of the king. But this work can claim no higher antiquity than the reign of Richard II., and its authority is only useful so far as it may be evidence of tradition, believed and relied on at that period. Misled by its supposed authenticity, Sir Edward Coke and Elsynge entertained no doubt of the facts as there stated; and the former alleged that he had seen a record of the 30 Henry I., (1130) of the degrees and seats of the lords and commons as one body, and that the separation took place at the desire of the commons. . . . The enquiry however is of little moment, for whether the commons sat with the lords in a distinct part of the same chamber, or in separate houses as at present, it can scarcely be contended that, at any time after the admission of the citizens and burgesses, the commons intermixed with the lords, in their votes as one assembly. Their chief business was the voting of subsidies, and the bishops granted one subsidy, the lords temporal another, and the commons again a separate subsidy for themselves. The commons could not have had a voice in the grants of the other estates; and although the authority of their name was constantly used in the sanction of Acts of Parliament, they ordinarily appeared as petitioners. In that character it is not conceivable that they could have voted with the lords, and it is well known that down to the reign of Henry VI., no laws were actually written and enacted until after the parliament." . . . "Whenever this separation may have been effected, it produced but little practical change in the uninterrupted custom of parliament. The causes of summons are still declared by the crown to the lords and commons assembled in one house; the two houses deliberate in separate chambers, but under one roof; they communicate with each other by messages and conference; they agree in resolutions and in making laws, and their joint determination is submitted for the sanction of the crown. They are separated, indeed, but in legislation they are practically one assembly, as much as if they sat in one chamber, and in the presence of each other, communicated their separate votes."

Power and Jurisdiction of Parliament.

1. *Legislative Authority collectively.*—The authority of parliament extends over the United Kingdom and all its colonies and foreign possessions. There are no other limits to its power of making laws for the whole empire than those which are common to it and to all other sovereign authority, the willingness of the people to obey, or their power to resist them. It has power to alter the constitution of the country, for that is the constitution which the last act of parliament has made; and it may even take away life by acts of attainder.

Parliament does not in the ordinary course legislate directly for the colonies. For some, the queen in council legislates, and others have legislatures of their own, and propose laws for their internal government, subject to the approval of the queen in council; but these may afterwards be repealed or amended by acts of parliament. Their legislatures and their laws are both subordinate to the supreme power of the mother country. The constitution of Lower Canada was suspended in 1840; and a provisional government, with legislative functions and great executive powers, was established by the British parliament. Slavery was abo-

lished by an act of parliament in 1833 throughout all the British possessions, whether governed by local legislatures or not; but certain measures for carrying into effect the intentions of parliament were left for subsequent enactment by the local bodies, or by the queen in council. The House of Assembly of Jamaica, the most ancient of our colonial legislatures, had neglected to pass an effectual law for the regulation of prisons, which became necessary upon the emancipation of the negroes, and parliament immediately passed a statute for that purpose. The Assembly were indignant at the interference of the mother country, and neglected their functions, until an act was passed by the imperial parliament which suspended the constitution of Jamaica unless they resumed them.

The power of imposing taxes upon colonies for the support of the parent state was attempted to be exercised by parliament upon the provinces of North America; but this attempt was the immediate occasion of the severance of that country from our own.

There are some subjects indeed, upon which parliament, in familiar language, is said to have no right to legislate, such for instance as the Church; but no one can intend more by that expression than that it is inexpedient to make laws as to such matters. Parliament has made a new distribution of portions of Church property. The very prayers and services of the Church are prescribed by statute; and the Church Discipline Act is an instance of parliament regulating the conduct of the ministers of the Church. Parliament has changed the professed religion of the country, and has altered the hereditary succession to the throne. To conclude, in the words of Sir Edward Coke, the power of parliament "is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds."

2. *Distribution of Powers between King, Lords, and Commons.*—Custom and convenience have assigned to different branches of the legislature peculiar powers. These are subject to any limitation or even transference which parliament may think fit. The king swears at the coronation to govern "according to the statutes in parliament agreed upon," and these of course may be altered. Prerogatives of the crown which have ever been enjoyed might yet be taken away by the king, with the consent of the three estates of the realm. The king sends and receives ambassadors, enters into treaties with foreign powers, and declares war or peace, without the concurrence of lords and commons; but these things he cannot do without the advice of his ministers, who are responsible to parliament. Certain parliamentary functions are exercised by the king, which are important in the conduct of legislation.

Summons.—It is by the act of the king alone that parliament can be assembled. There have been only two instances in which the lords and commons have met of their own authority, namely, previously to the restoration of King Charles II., and at the Revolution in 1688.

The first act of Charles II.'s reign declared the lords and commons to be the two houses of parliament, notwithstanding the irregular manner in which they had been assembled, and all their acts were confirmed by the succeeding parliament summoned by the king; which however qualified the confirmation of them by declaring that "the manner of the assembling, enforced by the difficulties and exigencies which then lay upon the nation, is not to be drawn into example." In the same manner the first act of the reign of William and Mary declared the convention of lords and commons to be the two houses of parliament, as if they had been summoned according to the usual form, and the succeeding parliament recognised the legality of their acts. [CONVENTION PARLIAMENT.] But although the king may determine the period for calling parliaments, his prerogative is restrained within certain limits; and he is bound by statute to issue writs within three years after the determination of any parliament; and the practice of providing money for the public service by annual enactments renders it compulsory upon him to summon parliament every year.

There is one contingency upon which the parliament may meet without sum-

mons, under the authority of an act of parliament. It was provided by the 6 Anne, c. 7, that "in case there should be no parliament in being at the time of the demise of the crown, then the last preceding parliament should immediately convene and sit at Westminster, as if the said parliament had never been dissolved." By the 37 Geo. III., c. 127, a parliament so revived would only continue in existence for six months, if not sooner dissolved.

As the king appoints the time and place of meeting, so also at the commencement of every session he declares to both houses the cause of summons by a speech delivered to them in the House of Lords by himself in person, or by commissioners appointed by him. Until he has done this, neither house can proceed with any business.

The causes of summons declared do not make it necessary for parliament to consider them only, or to proceed at once to the consideration of any of them. After the speech, any business may be commenced; and both Houses, in order to prove their right to act without reference to any authority but their own, invariably read a bill a first time *pro formâ* before they take the speech into consideration. Other business is also done very frequently at the same time. New writs are issued for places which have become vacant during the recess, returns are ordered, and even addresses are presented on matters unconnected with the speech. In 1840 a question of privilege, arising out of the action of Stockdale against the printers of the house, was entertained before any notice was taken of her Majesty's speech.

Prorogation and Adjournment.—Parliament can only commence its deliberations at the time appointed by the king; neither can it continue them any longer than he pleases. He may prorogue parliament by having his command signified in his presence by the lord chancellor or speaker of the House of Lords to both houses, or by writ under the great seal, or by commission. The effect of a prorogation is at once to suspend all business until parliament may be summoned again. Not only are the sittings of parliament at an end, but all proceedings pending at the time, except impeachments by the commons, are quashed. A bill must be renewed after a prorogation, as if it had never been introduced, though the prorogation be for no more than a day. William III. prorogued parliament from the 21st October, 1689, to the 23rd, in order to renew the Bill of Rights, concerning which a difference had arisen between the two houses that was fatal to it. It being a rule that a bill cannot be passed in either house twice in the same session, a prorogation has been resorted to, in other cases, to enable a second bill to be brought in.

Adjournment is solely in the power of each house respectively. It has not been uncommon indeed for the king's pleasure to be signified, by message or proclamation, that both houses should adjourn. Either of them however may decline complying with what can be considered as no more than a request. Business has frequently been transacted after the king's desire has been made known, and the question for adjournment put in the ordinary manner.

Dissolution.—The king may also put an end to the existence of parliament by a dissolution. He is not however entirely free to define the duration of a parliament, for after seven years it ceases to exist under the statute of George I., commonly known as the Septennial Act. Before the Triennial Act, 6 Wm. and Mary, there was no limit to the continuance of a parliament, except the will of the king. Parliament is dissolved by proclamation, after having been prorogued to a certain day. This practice, according to Hatsell, "which has now been uniform for above a century, has probably arisen from those motives that are suggested by Charles I., in his speech in 1628, "that it should be a general maxim with kings themselves only to execute pleasing things, and to avoid appearing personally in matters that may seem harsh and disagreeable."

In addition to these several powers of calling a parliament, appointing its meeting, directing the commencement of its proceedings, determining them for an indefinite time by prorogation, and finally of dissolving it altogether, the crown has

the creation of one entire branch of the legislature; together with other parliamentary powers, which will hereafter be noticed in treating of the functions of the two houses. But though the name of the king or reigning queen is used on all the occasions above mentioned, the determination when and how the prerogatives of the crown shall be employed depends on the cabinet, to whom the king intrusts the administration of the government. [CABINET; KING.]

The judicial functions of the lords, and their power to pass bills affecting the peerage, which the commons may not amend, are the only properties peculiar to them, apart from their personal privileges.

Taxation.—The chief powers vested in the House of Commons are those of imposing taxes and voting money for the public service. Bills for these purposes can only originate in that house, and the lords may not make any alterations in them, except for the correction of clerical errors. On the opening of parliament, the king directs estimates to be laid before the house, but the amount may be varied by the commons at pleasure. Grants distinct from those proposed in the estimates cannot be made without the king's recommendation being signified. The commons will not allow the right of the lords to insert in a bill any pecuniary penalties or to alter the amount or application of any penalty imposed by themselves; but the rigid assertion of this rule was found to be attended with much inconvenience, and a standing order was made in 1831, directing the Speaker in each case to report whether the object of the lords appears to be "to impose, vary, or take away any pecuniary charge or burthen on the subject," or "only to relate to the punishment of offences, and the house shall determine whether it may be expedient in such particular case to insist upon the exercise of their privilege." In the present session (1846) also, the Commons have permitted certain railway bills to originate in the House of Lords, notwithstanding the rates and tolls which must necessarily be levied under their authority.

Right of determining Elections.—Another important power peculiar to the commons is that of determining all matters touching the election of their own members, and involving therein the rights of the electors. Upon the latter portion of their right a memorable contest arose between the lords and commons in 1704. Ashby, a burgess of Aylesbury, brought an action at common law against the returning-officers of that town for having refused to permit him to give his vote at an election. A verdict was obtained by him, but a judgment was given against him in the Queen's Bench, which was reversed by the House of Lords upon a writ of error. The commons declared that "the determination of the right of election of members to serve in parliament is the proper business of the House of Commons, which they would always be very jealous of, and this jurisdiction of theirs is uncontested; that they exercise a great power in that matter, for they oblige the officer to alter his return according to their judgment; and that they cannot judge of the right of election without determining the right of the electors, and if electors were at liberty to prosecute suits touching their right of giving voices in other courts, there might be different voices in other courts, which would make confusion, and be dishonourable to the House of Commons; and that therefore such an action was a breach of privilege." In addition to the ordinary exercise of their jurisdiction as regarded the right of elections, the commons relied upon an act of the 7 Wm. III. c. 7, by which it had been declared that "the last determination of the House of Commons concerning the right of elections is to be pursued." On the other hand, it was objected that "there is a great difference between the right of the electors and the right of the elected; the one is a temporary right to a place in parliament *pro hâc vice;* the other is a freehold or a franchise. Who has a right to sit in the House of Commons, may be properly cognizable there; but who has a right to choose, is a matter originally established even before there is a parliament. A man has a right to his freehold by the common law, and the law having annexed his right of voting to his freehold,

it is of the nature of his freehold, and must depend upon it. The same law that gives him his right must defend it for him, and any other power that will pretend to take away his right of voting, may as well pretend to take away the freehold upon which it depends." These extracts from the Report of a Lords' Committee, 27 March, 1704, upon the conferences and other proceedings in the case of Ashby and White, give an epitome of the main arguments upon which each party in the contest relied. The whole of this Report, together with another of the 13th March, may be read with great interest.

Encouraged by the decision of the House of Lords, five other burgesses of Aylesbury, now familiarly known as "the Aylesbury men," commenced actions against the constables of their town, and were committed to Newgate by the House of Commons for a contempt of their jurisdiction. They endeavoured to obtain their discharge on writs of *habeas corpus*, but did not succeed. The commons declared their counsel, agents, and solicitors guilty of a breach of privilege, and committed them also. Resolutions condemning these proceedings were passed by the lords; conferences were held, and addresses presented to the queen. At length the queen came down and prorogued parliament, and thus put an end to the contest and to the imprisonment of the Aylesbury men and their counsel.

The question which was agitated at that time has never since arisen. The commons have continued to exercise the sole power of determining whether electors have had the right to vote while inquiring into the conflicting claims of candidates for seats in parliament, and specific modes for trying the right of election by the house have been prescribed by statutes, and its determination declared to be "final and conclusive in all subsequent elections, and to all intents and purposes whatsoever."

Connected with the power of the commons to adjudicate upon all matters relating to elections, may be mentioned their power over the eligibility of candidates. John Wilkes was expelled, in 1764, for being the author of a seditious libel. In the next parliament (February 3, 1769) he was again expelled for another libel; a new writ was ordered for the county of Middlesex, which he represented, and he was re-elected without a contest; upon which it was resolved, on the 17th February, "that having been in this session of parliament expelled this house, he was and is incapable of being elected a member to serve in this present parliament." The election was declared void, but Mr. Wilkes was again elected, and his election was once more declared void, and another writ issued. A new expedient was now used. Mr. Luttrell, then a member, accepted the Chiltern Hundreds, and stood against Mr. Wilkes at the election, and being defeated, petitioned the house against the return of his opponent. The house resolved that although a majority of the electors had voted for Mr. Wilkes, Mr. Luttrell ought to have been returned, and they amended the return accordingly. Against this proceeding the electors of Middlesex presented a petition, without effect, as the house declared that Mr. Luttrell was duly elected. The whole of these proceedings were severely condemned, and on the 3rd of May, 1782, the resolution of the 17th of February, 1769, was ordered to be expunged from the journals as "subversive of the rights of the whole body of electors of this kingdom." A resolution similar to that expunged had been passed in the case of the unfortunate Hall, in 1580, as part of the many punishments inflicted upon him, which we shall have occasion to mention.

Oaths.—The power of administering oaths exercised by the lords is not claimed by the House of Commons. They formerly endeavoured to attain the end supposed to be secured by the administration of an oath, by resorting to the authority of justices of the peace who happened to be members of their own body; but this and other expedients of the same kind have long since been abandoned, and witnesses guilty of falsehood are punished by the house for a breach of privilege. Election committees have power by statute to administer oaths, and witnesses who give false evidence

before such committees are guilty of perjury.

3. *Privileges.*—Both houses of parliament possess various powers and privileges for the maintenance of their collective authority, and for the protection, convenience, and dignity of individual members. At the commencement of each parliament, the Speaker, on behalf of the commons, has "laid claim to them of the king" since the reign of Henry VIII., but they appear to have been always enjoyed with equal certainty before that time. Some of them have been subsequently confirmed, modified, and even abolished by acts of parliament, but the petition of the Speaker remains unchanged, and prays for some which have been disallowed by law since the original form was adopted.

Commitment and Fines.—The power of commitment for contempt has always been exercised by both houses. It has been repeatedly brought under the cognizance of the courts, and allowed without question. Mr. Wynn in his 'Argument,' states that there are upwards of one thousand cases of commitment by the House of Commons to be found in their Journals since 1547. Breaches of privilege committed in one session may be punished by commitment in another, as in the well-known case of Murray, in 1751-2, who was imprisoned in Newgate for a libel until the end of the session, and on the next meeting of parliament was again ordered to be committed; but he had absconded in the meanwhile. Contempts of a former parliament may also be punished. The lords may commit for a definite period beyond the duration of the session or parliament; but a commitment by the commons holds good only until the close of the session.

The house of lords, in addition to the power of commitment, may impose fines. This privilege is no longer exercised by the commons; but amongst the most remarkable cases in which it was formerly used, we may mention that of Mr. Hall, a member who had incurred their displeasure, by publishing a work "very slanderous and derogatory to the general authority, power, and state of the house, and prejudicial to the validity of its proceedings in making and establishing laws," and was ordered to "pay a fine to the queen of five hundred marks." The house at the same time assumed a power not found to have been exercised in other cases. It committed Mr. Hall to the Tower, and ordered that he should remain there for "six months, and until he should make retraction of the book." This punishment was commitment for a time certain without reference to the continuance of the session, and, in the event of a refusal to retract the book, amounted to perpetual imprisonment. A practice still exists which partakes of the nature of a fine. There are certain fees payable by persons committed to the custody of the serjeant-at-arms, and it is usual on discharging them out of custody to attach the condition of the "payment of the fees." These fees are occasionally remitted under particular circumstances—as, for example, on account of the poverty of the prisoner.

Freedom of Speech.—Freedom of speech is one of the privileges claimed by the Speaker on behalf of the commons, but it has long since been confirmed as the right of both houses of parliament by statutes. It was acknowledged by an act in the reign of Henry VIII., by which the proceedings of the stannary court with respect to Richard Strode, a member, who was fined and imprisoned by that court for having proposed a bill to regulate the tinners in Cornwall, were declared illegal, and the repetition of similar encroachments upon the privilege of parliament provided against. The language however was thought ambiguous, and it was by limiting its operation to the case of Strode, that a judgment was obtained in the King's Bench against Sir John Elliot, Denzil Hollis, and Valentine, in the reign of Charles I. A true interpretation of the law was subsequently established by resolutions of both houses of parliament, and by a formal reversal of this judgment by the house of lords. The most solemn recognition of the privilege is contained in the Bill of Rights, which declares "that the freedom of speech and debates and proceedings in parliament ought not to be impeached

or questioned in any court or place out of parliament."

There are however certain legal incidents to this privilege which it is necessary to notice. The law presumes that everything said in parliament is with the view to the public good and necessary for the conduct of public business; but should the member publish his speech, he is viewed as an author only, and if it contain libellous matter, he will not be protected by the privilege of parliament. In 1795 an information was filed against Lord Abingdon for libel. His lordship had accused his attorney, in parliament, of improper conduct in his profession. He afterwards published his speech in several newspapers at his own expense. His lordship pleaded his own cause, and contended that he had a right to print what he had, by the law of parliament, a right to speak; but Lord Kenyon said "that a member of parliament had certainly a right to publish his speech, but that speech should not be made a vehicle of slander against any individual; if it was, it was a libel." In 1813 a much stronger case of the same kind occured. Mr. Creevey, a member, had made a charge against an individual in the house of commons, and incorrect reports of his speech having appeared in several newspapers, Mr. Creevey sent a correct report to an editor, requesting him to publish it in his newspaper. A jury found Mr. Creevey guilty of libel, and the court of King's Bench refused an application for a new trial; on which occasion Lord Ellenborough said, "a member of that house has spoken what he thought material and what he was at liberty to speak, in his character as a member of that house. So far he is privileged: but he has not stopped there; but, unauthorized by the house, has chosen to publish an account of that speech in what he has pleased to call a corrected form, and in that publication has thrown out reflections injurious to the character of an individual."

Freedom from Arrest.—The Speaker's petition prays on behalf of the commons, "that their persons, *their estates, and servants*, may be free from arrests and all molestations." These words are not more extensive than the privilege as formerly enjoyed, and instances in which it has been enforced may be found in nearly every page of the earlier volumes of the Journals. This privilege has however been limited by statutes, the last of which (10 Geo. III. c. 50) states in the preamble that the previous laws were insufficient to obviate the inconveniences arising from the delay of suits by reason of privilege of parliament, and enacts that "any person may at any time commence and prosecute any action or suit, &c., against any peer or lord of parliament, or against any of the knights, citizens, or burgesses for the time being, or against any of their menial or any other servants, or any other person entitled to the privilege of parliament, and no such action shall be impeached, stayed, or delayed by or under colour or pretence of any privilege of parliament." Obedience to any rule of the courts at Westminster may be enforced by distress infinite, in case any person entitled to the benefit of such rule shall choose to proceed in that way.

The persons of members are still free from arrest or imprisonment in civil actions, but their property is as liable to the legal claims of all other persons as that of any private individual. Their servants no longer enjoy any privilege or immunity whatever.

The privilege of freedom from arrest has always been subject to the exception of cases of "treason, felony, and surety of the peace;" and though in other criminal charges each house may, if it see fit, prevent the abstraction of a member from his parliamentary duties, the case of Lord Cochrane, in 1815, will show how little protection the house of commons extends to its members in such cases. Lord Cochrane, having been indicted and convicted for a conspiracy, was committed to the King's Bench prison. He afterwards escaped, and was arrested by the marshal while sitting on the privy counsellor's bench in the house of commons, on the right hand of the chair, at which time there was no member present, prayers not having been read. The committee of privileges declared that by this proceeding of the marshal of the

King's Bench "the privileges of parliament did not appear to have been violated so as to call for the interposition of the house."

Courts of justice have committed privileged persons for contempt, and parliament has refused to protect them. By a standing order of the house of lords, 8th June, 1757, it was declared "that no peer or lord of parliament hath privilege of peerage or of parliament against being compelled by process of the courts of Westminster-hall to pay obedience to a writ of habeas corpus directed to him;" and in the case of Earl Ferrers, it was decided that an attachment may be granted if a peer refuses obedience to the writ of habeas corpus. There have been two recent cases, that of Mr. Long Wellesley in 1831, and that of Mr. Lechmere Charlton in 1837, in which members committed by the lord-chancellor for contempt have laid claims to privilege, which were not admitted by the house of commons.

Peers and lords of parliament are always free from arrest on civil process; and as regards the commons, their privilege is supposed to exist for 40 days after every prorogation and 40 days before the next appointed meeting.

Jurisdiction of Courts of Law in Matters of Privilege.—In connection with the exercise of privilege, an important point of law arises as to the jurisdiction of courts of justice. It is one of great interest and still greater doubt at the present moment, and has at various times been the occasion of much dispute and difficulty. Each house of parliament is acknowledged to be the judge of its own privileges. Sir Edward Coke affirms, "whatever matter arises concerning either house of parliament, ought to be examined, discussed, and adjudged in that house to which it relates, and not elsewhere." (4 *Inst.*) But again, in the disputes in the case of the Aylesbury men, which has been already referred to, the lords communicated to the commons at a conference a resolution, "that neither house of parliament have power by any vote or declaration to create to themselves new privileges not warranted by the known laws and customs of parliament," which was assented to by the commons. (14 *Commons' Journals*, 555, 560.) The degree of jurisdiction to be exercised by the courts and the proper mode of dealing with actions involving matters of privilege, it would indeed be difficult to determine, after the inconsistencies which have been shown in practice and the great variety of opinions expressed by learned men. No more than a concise statement of a few cases will be needed to show the difficulties in which the question is involved.

First, as to the right of courts to inquire into the existence and nature of privileges claimed by either House of Parliament. Coke lays it down that "judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but *secundum leges et consuetudinem parliamenti;* and so the judges in divers parliaments have confessed." (4 *Inst.*, 15.) When Paty, one of the Aylesbury men, was brought before the Queen's Bench on a writ of habeas corpus, Mr. Justice Powell said "this court may judge of privilege, but not contrary to the judgment of the House of Commons;" and again, "this court judges of privilege only incidentally: for when an action is brought in this court, it must be given one way or other." (2 Lord Raymond, 1105.) The opinions of other judges to the same effect, expressed at different times, might also be given. The words contained in the Bill of Rights, that the "debates and *proceedings* in parliament ought not to be impeached or questioned in any court or place out of parliament," are generally relied upon in confirmation of this doctrine. If this view were always taken of the question, little difference between parliament and the courts of law would arise. The course would be simple. Whatever action might be brought would be determined in a manner agreeable to the house whose privileges were questioned; and if the lords, in case of appeal, were to abide by the same rule, there would be no dissensions. But as such unanimity of opinion has not always existed, there has been a clashing of jurisdictions which nothing probably but a statute can prevent for the future.

A judgment was obtained against Sir W. Williams, the Speaker of the House of Commons, in the second year of James II., for having caused a paper entitled 'Dangerfield's Narrative' to be printed by order of the house. This the house declared to be "an illegal judgment," and against the freedom of parliament. A bill was also brought in to reverse the judgment, but it miscarried in three different sessions. (10 *Commons' Journals*, 177, 205.)

The denial of the exclusive jurisdiction claimed by the commons in 1704, in respect of the right of elections, as stated above, is another important occasion in which the privilege of the commons has clashed with the judgments of legal tribunals.

The only other case which need be mentioned in this place is that of Stockdale *v.* Hansard. Messrs. Hansard, the printers of the House of Commons, had printed, by order of that house, the Reports of the Inspectors of Prisons, in which a book published by Stockdale was described in a manner which he conceived to be libellous. He brought an action against Messrs. Hansard during a recess, but had a verdict against him upon a plea of justification, as the jury considered the description of the work in question to be accurate. On that occasion Lord Chief Justice Denman, who tried the cause, made a declaration adverse to the privileges of the house, which Messrs. Hansard had set up as part of their defence. In his direction to the jury, his lordship said "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them, or for any bookseller who publishes a parliamentary report containing a libel against any man." In consequence of these proceedings, a committee was appointed, on the meeting of parliament in 1837, to examine precedents and to ascertain the law and practice of parliament in reference to the publication of papers printed by order of the house. The result of these inquiries was the passing of the following resolutions by the house:—

"That the power of publishing such of its reports, votes, and proceedings as it shall deem necessary or conducive to the public interests is an essential incident to the constitutional functions of parliament, more especially of this house as the representative portion of it.

"That by the law and privilege of parliament, this house has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges, and that the institution or prosecution of any action, suit, or other proceeding, for the purpose of bringing them into discussion or decision before any court or tribunal elsewhere than in parliament, is a high breach of privilege and renders all parties concerned therein amenable to its just displeasure, and to the punishment consequent thereon.

"That for any court or tribunal to assume to decide upon matters of privilege inconsistent with the determination of either House of Parliament is contrary to the law of parliament, and is a breach and contempt of the privileges of parliament."

Notwithstanding these resolutions, Stockdale immediately commenced another action. The Queen's Bench decided against the privileges of the house. A third action was then brought by Stockdale, and not being defended, judgment went by default, and the damages were assessed in the sheriff's court.

As yet the jurisdiction of the courts to inquire into the privileges of parliament and to give judgments inconsistent with its determination has alone been touched upon; the next question is as to the mode of dealing with actions involving privilege when brought in the courts. The practice has been extremely various and inconsistent, as a rapid view of it will show. An action had been brought against Topham, the serjeant-at-arms, for executing the orders of the House of Commons in arresting certain persons. Topham pleaded to *the jurisdiction of the court*, but his plea was overruled, and judgment was given against him. The house declared the judgment to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, the judges, to the custody of the serjeant. (10 *Commons' Journals*, 227.)